COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

RCMP Act - Part VII
Subsection 45.45(14)

COMMISSION INTERIM REPORT

Following a Public Hearing

Into the complaints regarding the events that took place in connection with demonstrations during the Asia Pacific Economic Cooperation Conference in Vancouver, B.C. in November 1997 at the UBC Campus and at the UBC and Richmond detachments of the RCMP

July 31, 2001

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1. INTRODUCTION

In November 1997, Canada hosted the week-long Asia Pacific Economic Cooperation (APEC) Conference in Vancouver, with high-ranking delegates from throughout the Asia Pacific region. On the last day of the conference, leaders and their senior advisors were to meet in a retreat-like setting at the Museum of Anthropology on the campus of the University of British Columbia. The RCMP were responsible for security. The conference dates were November 19 - 25.

There were demonstrations by students and others against the regimes of some of the APEC members and protesters and police came into conflict. The actions of the RCMP in response to the protesters are the subject of 52 formal complaints and those complaints are the subject of this report.

2. COMMISSION FOR PUBLIC COMPLAINTS AGAINST THE RCMP

The Royal Canadian Mounted Police Public Complaints Commission was established by the *Royal Canadian Mounted Police Act*, section 45.29(1). As of January 1, 2001, the Commission's name has been changed to the Commission for Public Complaints Against the RCMP. The name change was meant to clarify to the public that the Commission is not part of the RCMP but is an independent body.

Any member of the public, whether directly affected or not, may lodge a complaint about the conduct of an RCMP officer. If the Commission Chair considers it would be in the public interest to do so, the Chair may institute a hearing into such a complaint.

The relevant sections of the *RCMP Act* are set out in Appendix I to this report.

2.1. This Inquiry

After the APEC conference, 52 complaints were filed with the Commission, all relating to events that took place at the UBC campus and the Richmond RCMP detachment on November 25 or the days immediately preceding.

On December 9, 1997, the Commission Chair initiated an investigation into the complaints. As a result of that investigation, on February 20, 1998 she instituted a hearing pursuant to section 45.43(1) of the *RCMP Act* and a three-member panel was charged with hearing the complaints. A hearing began on April 14, 1998 but was discontinued in December, 1998 after the panel members resigned.

As an Alternate Member of the Commission, I was assigned on December 21, 1998 to conduct this inquiry.

2.2. Terms of Reference

I was assigned by the Commission Chair:

> . . . to inquire into all matters touching upon these complaints, to hear all evidence relevant thereto, to ensure a full and fair hearing in respect of these complaints and to report at the conclusion of the hearing such findings of fact and recommendations as are warranted, and, without limiting the generality of the foregoing, to inquire into and to report on:
>
> a) the events that took place during, or in connection with, demonstrations during the Asia Pacific Economic Cooperation ("APEC") Conference in Vancouver, B.C. between November 23 and 27, 1997 on or near the UBC Campus and subsequently at the UBC and Richmond Detachments of the RCMP;
>
> b) whether the conduct of members of the RCMP involved in the events was appropriate to the circumstances;
>
> c) whether the conduct of members of the RCMP involved in the events was consistent with respect for the Fundamental Freedoms guaranteed by section 2 of the *Canadian Charter of Rights and Freedoms*.

2.3. The Hearing

Except in unusual circumstances, a Commission hearing is to be held in public. All sessions of this hearing in fact were held in public.

Both the complainant and the RCMP member whose conduct is complained of are to have full opportunity, whether in person or by counsel, to present evidence, cross-examine witnesses and make representations.

The first witness began testifying on March 23, 1999 and the hearing concluded on June 30, 2000. In all, the hearing occupied 170 days during which 153 witnesses were heard and 710 exhibits were received in evidence. The transcript of the testimony comprises more than 40,000 pages. The evidence of Deputy Commissioner Larry Proke was received by affidavit.

The witnesses are listed in Appendix II to this report.

2.4. This Report

This report is one step in the process that has been established for dealing with public complaints about RCMP conduct. The *RCMP Act* provides for these steps:

- I am directed to report in writing to the Solicitor General of Canada and the Commissioner of the RCMP such findings and recommendations as I see fit. (section 45.45(14))
- The Commissioner of the RCMP will review the complaints in light of my report and notify the Solicitor General and the Commission Chair of any further action that has been taken, or will be taken, with respect to the complaints. If the Commissioner decides not to act on any of my findings or recommendations, he must include reasons for not acting. (sections 45.46(1) and (2))
- The Commission Chair will then prepare a final report setting out such findings and recommendations with respect to the complaints as she sees fit. That report will be sent to the Solicitor General, the Commissioner of the RCMP, the members whose conduct is complained of, and the complainants. (section 45.46(3))

My jurisdiction is limited by the *RCMP Act* to making "findings" and "recommendations." This Commission has no power to determine either civil or criminal liability on the part of anyone. This issue was addressed by the Supreme Court of Canada in the *Krever* case: *Canada (Attorney General) v. Canada (Commissioner of Inquiry on the Blood System)* (1997), 48 Admin. L.R. (2d) 1.

In accordance with the *Krever* decision, I emphasize that the findings and recommendations made in this report cannot be taken as legal findings of criminal or civil liability.

3. THE COMPLAINTS

In their written submission at the close of the hearing, Commission Counsel grouped the 52 complaints into 17 separate categories which correspond to 17 separate events or situations.

I concluded that this approach was a sound initiative, well executed, and provided an appropriate focus for the preparation and presentation of my report. In speaking to the proposed grouping, counsel appearing for seven of the complainants (Complainants' counsel) said the 17 categories are a good working model for organizational purposes.

The 52 complaints in their original form are appended to my report (Appendix III) so that the public may fully appreciate the nature and variety of the complaints under consideration, and why the process has taken as long as it has.

I now list the 17 categories of incident or complaint in a generally chronological sequence. The comments following each heading are summary in nature and are provided here to give some context to the complaint categories.

Details of each category of complaint, along with my findings of fact and conclusions are dealt with in Chapters 13 to 30 of this report.

1. **UBC Security Perimeter and Demonstration Area**

   These complaints allege that the RCMP provided demonstration sites too small for the number of protesters and created security zones that were larger than necessary for security purposes so that APEC delegates would be shielded from the sights and sounds of protest.

2. **Singh Photo at ACCO Office**

   Part of Mr. Singh's complaint is that his photo was posted in the ACCO offices prior to the APEC conference. He said he found this to be intimidating.

3. Undertakings

On November 22 and 23, six protesters were arrested after refusing to leave their tents near the Museum of Anthropology. The area had become part of the security zone. Besides the arrests themselves, issue is taken with the undertakings that the arrested protesters were obliged to sign before they could be released. Those undertakings placed restrictions on the protesters' activities for the duration of the APEC conference.

4. Removal of Press Pass

Dennis Porter was a Simon Fraser University student who had volunteered as a cameraman with Working TV during the APEC conference. He obtained a press pass, which gave him access to the media centre at the Vancouver Trade and Convention Centre. He complains that during the conference, an RCMP officer wrongfully removed his press pass.

5. Singh Arrest, Charge & Release

This aspect of Jaggi Singh's complaint is that he was arrested on an outstanding warrant based on a spurious charge; the manner of the arrest was inappropriate in the circumstances; the timing of the arrest was calculated to prevent him from attending protests on November 25; and the bail conditions sought were overly restrictive.

6. Malmo-Levine Arrest

At a demonstration on campus on November 24, police moved forward to a investigate a student climbing a flagpole. David Malmo-Levine was arrested when he tried to interfere with the police. The complaint is that RCMP members wrongfully arrested Mr. Malmo-Levine and in carrying out the arrest used excessive force on him and others and infringed his right of expression.

7. Dog Bite

On November 24, some time after Mr. Malmo-Levine was arrested at the flagpole, Jaggi Singh, for the second time that day, and others were arrested at the plaza next to the Rose Garden. The complaint is that during Mr. Singh's arrest, Jamie Doucette was bitten on the arm by an RCMP police service dog.

8. Removal of Tibetan Flag from GSS Building

The complaint is that RCMP members wrongly removed the Tibetan flag from the Graduate Student Society building, wrongly removed Kevin Dwyer's security accreditation, and inadequately investigated complaints of criminal acts by students of Chinese heritage.

9. Removal of Green College signs & Jones Arrest

Signs made by Craig Jones were removed by RCMP members from the fence in front of Green College. More signs were removed from Mr. Jones and other residents of Green College when they gathered on the lawn in front of their residence, outside the secure zone just before the motorcades arrived. Mr. Jones was pushed to the ground and arrested.

10. Muttray & Doucette Arrests

On the morning of November 25, Jamie Doucette took a walkie-talkie to Gate 3 where the East Timor Alert Network (ETAN) planned a protest and symbolic arrest of President Suharto of Indonesia. Mr. Doucette was arrested. Some time later Annette Muttray went to Gate 3, also with a walkie-talkie, and she too was arrested. Mr. Doucette and Ms. Muttray complained about their arrests and also that their bicycles and a backpack were not secured by the police.

11. Confrontation at the Noon Rally

There were complaints that the RCMP used excessive force, including Oleoresin Capsicum spray (called, interchangeably, OC spray or pepper spray), on the crowd after a security fence came down, that they used it punitively and without warning, and that some who were seeking to be arrested peacefully were pepper sprayed and assaulted by police.

12. Oppenheim Arrest

Jonathan Oppenheim was arrested on the afternoon of November 25 at Gate 3 when he was suspected of playing a role in the collapse of the security fence near the School of Theology. The complaint is that Mr. Oppenheim was wrongfully arrested and that excessive force was used in his arrest.

13. Groebner Arrest

The complaint is that Johann Groebner was wrongfully arrested for an assault on a cameraman at the Gate 3 area after Mr. Oppenheim was arrested. The cameraman did not testify before the Commission and Mr. Groebner was never charged.

14. Megaphone Removal

Law student Brenna Bhandar attended the demonstration at the flagpole and joined the protesters sitting on the road near Gate 3. After seeing two protesters arrested she used a megaphone to urge the crowd to remain seated on the road. The complaint is that an officer grabbed the megaphone from her and took hold of her arm.

15. Police Identification

There were several complaints that RCMP officers at various times either did not display name tags or refused to identify themselves to members of the public.

16. Protesters Moved from Gate 6

The complaint is that peaceful protesters at Gate 6 were ordered to clear the road and then pepper sprayed before they had a chance to do so. Some were pepper sprayed as they were leaving. Others were pepper sprayed as they stood watching. Mark Brooks was arrested and pepper sprayed as he was asking for calm. Decontaminant services following the spray were said to be insufficient and inadequate.

17. Treatment of Prisoners at the Richmond Cells

The complaints are that:

- the driver of the wagon taking prisoners to the Richmond Detachment intentionally made the trip uncomfortable and long;
- at the Richmond cells, the prisoners were denied access to lawyers and access to washrooms;
- the prisoners were placed in overcrowded cells;
- the prisoners were denied blankets, given inadequate food, and threatened with pepper spray;
- the prisoners were held in custody for an excessive length of time; and
- female prisoners were unnecessarily strip searched.

4. THE APEC CONFERENCE

4.1. Purpose of APEC

The history and purpose of APEC conferences, the nature of the meetings, and the role of Canada as host of the 1997 conference were described in evidence.

APEC is an economic forum which promotes trade and economic cooperation among its member economies around the Pacific Rim. According to the Deputy Director of the APEC Coordinating Office (ACCO), members are referred to as "economies" rather than "countries" because of the participation of the three Chinese economies - the People's Republic of China, Chinese Taipei, and Hong Kong, China - not all of which are recognized as countries by the international community. Members in 1997 were:

Australia
Brunei Darussalam
Canada
Chile
Chinese Taipei
Hong Kong, China
Indonesia
Japan
Malaysia
Mexico
New Zealand
Papua New Guinea
Peoples Republic of China
Philippines
Republic of Korea
Singapore
Thailand
USA

Leaders of those economies and their senior advisors and officials meet annually.

4.2. Canada as Host

According to the evidence, Prime Minister Jean Chrétien had declared 1997 as "Canada's Year of Asia Pacific." As part of that initiative, Canada hosted meetings of senior officials and ministers, as well as cultural activities and other conferences across Canada, leading up to the APEC conference in Vancouver.

The schedule at Vancouver involved senior officials' meetings earlier in the week, followed by ministerial meetings, a break on Sunday and then meetings of the leaders on the Monday and Tuesday. Most events took place at the Vancouver Trade and Convention

Centre until the final day when the leaders were scheduled to meet at the Museum of Anthropology on the UBC campus, with lunch at nearby Norman Mackenzie House, the official residence of the President of UBC.

It became apparent at the hearing that the reason for holding the meeting at UBC was to provide a retreat-like setting, out of the centre of the city, where leaders could meet in relative isolation. Similar retreats had been a feature of previous meetings.

5. PLANNING FOR APEC

In all, 23,000 people were accredited to the APEC conference in Vancouver. This figure included 8,600 delegates and media representatives; more than 3,000 police officers; 1,000 volunteers; 130 ACCO employees; Department of National Defence employees; and suppliers such as hotel staff. The Vancouver conference was the culmination of a series of events across Canada throughout 1997. Not surprisingly, a complex organizational and planning structure was put in place.

5.1. Department of Foreign Affairs

5.1.1. Overall Responsibility

Planning began in the Department of Foreign Affairs and International Trade in 1996. Two divisions were set up within the Department: one to handle substantive matters, and the other to manage logistics.

The senior Canadian government official charged with overall responsibility for the planning and production of the APEC conference was an Assistant Deputy Minister in the Department of Foreign Affairs, Leonard J. Edwards. His formal title was Senior Official for APEC. He had responsibilities for both substantive and logistical issues. At the time he gave evidence in August 1999, Mr. Edwards was the Canadian Ambassador to Japan.

On the substantive side, Mr. Edwards chaired the 1997 senior officials' meetings. As he described it, this involved coordinating among several government ministries the preparation of Canadian positions and articulating them at the senior officials' meetings. He also prepared for the ministerial meetings which culminated in two ministerial meetings in Vancouver (Trade and Foreign Ministers) which were followed by the leaders' meeting on November 25.

On the logistical side, Mr. Edwards oversaw the work of ACCO, which reported to him.

5.1.2. Logistical Responsibility

ACCO was responsible for logistical arrangements for all events that were part of Canada's APEC year.

Mr. Edwards recruited Robert Vanderloo to be ACCO's Executive Director in April, 1996. Prior to taking up this position Mr. Vanderloo had been Director of the Asia Pacific Task Force (Team Canada Visit) at the Department of Foreign Affairs. At the time he gave evidence in September, 1999, he was Canadian Ambassador to Portugal.

ACCO began with two offices, one in Ottawa and one in Vancouver. The Ottawa office took responsibility for government liaison, sponsorship, administration, staffing, budgeting, and contact with foreign delegations. The Vancouver office was headed by Mary McNeil, as Deputy to Mr. Vanderloo. According to Ms. McNeil, the focus of the Vancouver office was "sheer logistics" including accommodation, accreditation, transportation, communication, site selection, and conference facility preparations.

The two offices merged in September, 1997, when Mr. Vanderloo moved to Vancouver.

5.1.3. Relationships with the Prime Minister

Mr. Edwards and Mr. Vanderloo were both asked what their relationship was with Prime Minister Chrétien and with the Prime Minister's Office in the months leading up to the APEC conference.

Mr. Edwards said he was responsible for working directly with the Prime Minister on substantive issues involved in the leaders' meeting. He did not report to either the Privy Council Office or the Prime Minister's Office. Mr. Edwards was responsible for preparing the Prime Minister for his meetings with APEC leaders. He met with the Prime Minister twice in Ottawa and then once in Vancouver to go over the contents of a briefing book he had prepared for him. Mr. Edwards met once or twice with Jean Carle, Director of Operations, and Jean Pelletier, Chief of Staff in the Prime Minister's Office and, on occasion, with James C. Bartleman, who he described as the Prime Minister's Foreign Policy Advisor in the Privy Council Office.

Mr. Vanderloo said that ACCO consulted with the Prime Minister's Office on all issues relating to events where the Prime Minister would participate. The Prime Minister's Office was on ACCO's mailing list of senior government officials and departments for weekly updates on logistical issues. Mr. Vanderloo's only contact with the Prime Minister's Office was Mr. Carle. He said he had five or six meetings with Mr. Carle and also spoke with him on the telephone. Ms. McNeil said that the designation of Mr. Carle as a liaison person allowed ACCO to be sure that they were providing the Prime Minister with an atmosphere he would be comfortable with as host of the APEC leaders.

5.2. Police

5.2.1. Magnitude of the Policing Task

The APEC assignment was "the largest security event that would be undertaken by policing in the City of Vancouver" according to Vancouver Police Department (VPD) Deputy Chief Brian J. McGuinness. RCMP Supt. Wayne May acknowledged that "this APEC planning was really the largest planning event that the RCMP had undertaken." He said between 2,200 and 2,300 RCMP officers were involved - the majority from British Columbia and up to 180 from elsewhere - plus several hundred VPD members.

An appreciation of the magnitude of the undertaking can be gained from Supt. May's testimony:

> Q: Perhaps if you could just explain to Mr. Hughes the - the general size of the event, and where the UBC site fit into that, to give some perspective?
>
> A: Okay. The planning for APEC involved 18 economies, 18 large economies, members of APEC. Attach to that the number of leaders, there'd be 18 leaders visiting, together with their spouses, although not all came, together with Ministers of Foreign Affairs, and other ministers. So all in all, we were planning for in the vicinity of 75 Internationally Protected People, 12 of whom were at a very maximum level of security. There were a number of major sites around the City of Vancouver, including the University of British Columbia, the Vancouver Trade & Convention Centre, BC

> Place. There were, I believe, eight or nine hotels that were accommodating the leaders, and those who were receiving protection. The airport was also a major site. We were responsible for providing security to the (Internationally Protected Persons) IPPs from the time they landed in Victoria - or in Vancouver, until the time that they left. . . .It was - it involved a very complex logistical challenge in driving these protected people from various parts of the city to their meeting places back to their residences. Roads were closed in the city. Approximately 90 motorcycles were utilized to provide escort service. Some roads were closed completely and secured with . . . Police Officers and auxiliary Members. Of the timing of the events, the protocol involved in the heads of delegation arriving at certain times in certain order was - was a significant challenge to us, as well. As was securing some of the very large sites that we had in this area.

5.2.2. RCMP and VPD Roles

Both the RCMP and Vancouver Police Department had policing roles at the APEC conference. The VPD has day to day responsibility for policing throughout the City of Vancouver, with the exception of the UBC campus, the University Endowment Lands, and the Greater Vancouver Regional District Pacific Spirit Park, which are under RCMP jurisdiction. Most significantly, the RCMP had jurisdiction over and responsibility for the 75 Internationally Protected Persons attending the APEC conference from the time they landed in Vancouver until their departure.

Insp. Murray Day held the position of APEC Policy Coordinator for the VPD. He described his responsibilities as the coordination of planning for security and traffic matters in assisting the RCMP with the APEC conference. Consistent with what Insp. Day said, the RCMP held overall responsibility for security at the APEC conference though in many respects they held joint command with the VPD.

From the opening of the conference on November 19 and onwards there was, at RCMP Headquarters at 37th Avenue and Heather Street in Vancouver, what Insp. Day called a "joint command" with the over-all commanders for the week including members of each force. Throughout Vancouver, at all the events that took place between November 19 and November 24, there were joint site commanders from each force. However, at UBC on November 25 and the preceding days, the RCMP site commander designated for that location was solely in command. VPD inspectors were on site to liaise with the RCMP site commander with respect to the VPD members serving on the Quick Response Teams and the VPD Crowd Control Unit, both of which were present on the UBC campus on November 25.

Ms. McNeil, Mr. Edwards, Mr. Vanderloo and Mr. Carle all acknowledged that responsibility for security rested with the RCMP. "Their mandate", said Ms. McNeil, "was to provide security for all of the IPPs."

Although this Commission has jurisdiction over the RCMP, it has no jurisdiction over the VPD.

5.2.3. Police & the Planning Organization

ACCO had its Vancouver premises on the 11th and 12th floors at 1125 Howe Street. Ms. McNeil testified that approximately 13 RCMP and VPD officers occupied one half of the 9th floor of the same building. She said that the RCMP and the VPD were considered to be the Security Directorate for the ACCO planning team headed by Mr. Vanderloo, with herself as Deputy.

As members of the Security Directorate, Supt. May of the RCMP and Insp. Day of the VPD were located in the ninth floor offices and were included in all ACCO directors' meetings.

RCMP officers located on the 9th floor in addition to Supt. May included Insp. Bill Dingwall, Sgt. Peter S. Koleyak and Cst. Donald C. Merkel. VPD officers located there included Sgts. Douglas Huffsmith and Al Niedtner and Cst. Joanne E. Boyle. All officers located at Howe Street were invited to the weekly ACCO staff meetings held to discuss issues and keep staff up to date on developments.

ACCO also established a coordinating committee which met monthly to bring together all parties involved in the organization of the APEC conference, including representatives from the various sites involved in the APEC conference and the provincial government. Supt. May or his deputy, Insp. Dingwall, attended these monthly meetings. Four subcommittees reported to the coordinating committee - Operations, Communications, Business, and Special Events - and the RCMP had a representative on each of these subcommittees.

5.3. RCMP Planning Structure for APEC

RCMP planning for a major event, such as the APEC conference, entails an extensive organizational structure. The planning structure for APEC as it stood on April 1, 1997 was displayed in chart form and is attached as Appendix IV.

5.3.1. Federal Security Coordinator

Typically, for a major event, the RCMP Assistant Commissioner in Ottawa who is in charge of International Liaison and Protective Policy nominates a Federal Security Coordinator. That Coordinator reports back to the Assistant Commissioner who made the appointment and is involved with the federal organizers.

In the case of APEC, A/Comm. Wayne Martel appointed Supt. Wayne May to the role of Federal Security Coordinator on February 13, 1997. This gave Supt. May overall responsibility for security planning for the 1997 APEC conference. He would be responsible for the security of the visiting Internationally Protected Persons from the time they touched down in Canada until the time they left.

Supt. May had been a member of the RCMP since 1965. He had had extensive experience with VIP or Internationally Protected Person security dating back to 1967. In 1989 he began working full time in the Protective Service Division of the RCMP and had served continuously since that time in protective operations in both Ontario and British Columbia. In 1990, he completed a 12-day intensive training course on VIP protection.

He had tactical troop experience, having served in that capacity in St. John's, Newfoundland and at the RCMP's Ottawa headquarters.

5.3.2. Division Operations Commander

The structure then in place called for the Commanding Officer of the division in which the event is taking place to appoint a Division Operations Commander who would report back to the Commanding Officer who made the appointment. This appointment should be made soon after the Coordinator is in place, according to RCMP A/Comm. W. P. Wawryk, who at the time of the hearing was in charge of International Liaison and Protective Policy. In the case of APEC, these appointments were made in reverse order. In July 1996, the then Commanding Officer of "E" Division, Deputy Commissioner Larry Proke, had already appointed Supt. May to the position of Division Operations Commander. When Supt. May was appointed as Federal Security Coordinator the following February, he then held the two most senior positions in the planning structure for the 1997 APEC conference.

In July 1997, A/Comm. Murray Johnston became the Commanding Officer of "E" Division, which encompasses all of British Columbia. He said that the Division Operations Commander appointment meant that the planning responsibility for the APEC conference had been delegated to Supt. May but nevertheless he was responsible for ensuring that the security operation was carried out as planned. He said "I had the overall responsibility but with competent people, I left it in their hands."

Supt. May assumed a full-time role in the APEC planning structure in January 1997.

5.3.3. Deputy Division Operations Commander

Second in command to Supt. May was the Deputy Division Operations Commander. Insp. William Dingwall was named to that role in 1996. In September of that year, he attended a three-week VIP course and then immediately went full-time into his APEC work. He assumed a major planning leadership role until Supt. May's arrival on a full-time basis.

Insp. Dingwall had experience with site security. He worked in the policy centre responsible for VIP visits at Headquarters in Ottawa. After graduating *magna cum laude* in law in Ottawa, he was named as Officer in Charge of Complaints and Internal Investigations in British Columbia.

5.3.4. Planning Secretariat

Associated with Insp. Dingwall in the latter part of 1996 were four officers who became part of the Planning Secretariat. Included in this group were Sgt. Peter Koleyak and Cst. Don Merkel. Insp. Dingwall chaired this group, reporting to Supt. May. They were joined in the Planning Secretariat by representatives of the VPD.

5.3.5. Security Steering Committee

Supt. May appointed senior officers to head up the following sections:

- Supt. Peter Martin: Informatics;
- Supt. Vincent M. Casey: Intelligence/Investigation;
- Insp. Raymond Forsythe: Operational Support (Field Services and Tactical Response);
- Insp. Bob Stone: Administrative and Logistical Support;
- Insp. Dingwall: Sites;
- Supt. Gerald D. Green: Visits; and
- Insp. Al Mullin: Motorcades.

Those officers carried responsibilities for the overall planning of the APEC conference. The group, under Supt. May's leadership, was ultimately renamed the Security Steering Committee for APEC.

5.3.6. Operational Support Planning

Insp. Forsythe testified that as head of the "Operational Support" section it was his task to bring together approximately 17 different areas of responsibility that would provide service in a number of different areas, throughout the APEC conference. These included field support (air services, underwater recovery, security engineering, counter technical intrusion, major incident planning and major events, marine services, identification services, explosive disposal unit, security systems, and police service dogs); tactical response (emergency response teams, tactical teams, and a quick response team); and agency liaison (health services, biological and chemical response, and interaction with municipal and provincial agencies.)

Insp. Forsythe emphasized that he had no tactical decision making authority whatsoever. His responsibility was to ensure that those responsible for each area prepared an operational plan "identifying what they felt was going to be required of them, their ability to provide or meet that goal and then put in place some action planning on how that was going to be achieved and whatever training was going to be required to bring them up to a level to perform those tasks." It was then Insp. Forsythe's responsibility to send the operational plans to the Security Steering Committee for review and acceptance. Insp. Dingwall said it was his responsibility to review all of the operational plans for individual sites that were sent to the Security Steering Committee.

All of this planning work related to the entire APEC conference and not solely to the leaders' meeting at UBC on November 25. There was an overall operational plan produced for the APEC conference and Insp. Dingwall said he held responsibility for its preparation under the direction of Supt. May.

Supt. May said that each of the group heads contributed the individual plans that were brought together and coordinated into the main operational plan. It was finalized and distributed in early November. With further reference to his planning responsibilities and the UBC event, Supt. May said:

> My responsibility was to ensure that there was a plan in place to develop - or to implement the security at UBC and that was developed through Supt. Thompsett for the site security.

Supt. Trevor Thompsett, about whom more will be said in this report, was the Site Commander at UBC for the leaders' meeting held on November 25.

Supt. May's evidence about Supt. Thompsett's responsibility for development of the security plan at UBC is consistent with all the other evidence before me on that issue, including Insp. Forsythe's and Insp. Thompsett's. Earlier in his testimony Supt. May said that ultimate responsibility for the planning of strategy for dealing with demonstrations and crowds throughout the whole of APEC, including UBC, in particular, rested with Insp. Forsythe. Insp. Forsythe did not view that as his responsibility and I believe that Supt. May was mistaken because, at the same time, Supt. May said he had no knowledge of Insp. Forsythe's training and experience in crowd control and demonstrations. It is inconceivable that Supt. May, as the overall head of security, would assign such a major responsibility to one whose knowledge and experience in the area was completely unknown to him.

5.3.7. Appointment of Site Commanders

Part of the planning process involved the appointment of two Site Commanders – one from the RCMP and one from the Vancouver Police Department – for each location where an APEC related event would occur. The exception was the UBC site, for which Supt. Thompsett was named the sole Site Commander.

Because Site Commanders carried operational responsibility for security at events occurring at the locations to which they were each assigned, this was a most important and significant role. That certainly was the case with respect to the UBC site. Insp. Dingwall said that Supt. Thompsett's role was to "do the in-depth planning for UBC." During the next three to four months he would deal with UBC and with the planning group.

5.3.7.1. Superintendent Thompsett

Supt. Thompsett assumed his Site Commander responsibilities in May of 1997 but he continued to hold his District Officer position located in Chilliwack. For the first six months, Supt. Thompsett made a number of trips to Vancouver to deal with his APEC responsibilities but during this period he relied heavily on his Deputy Site Commander, Sgt. Rick Anderson. Together they met their responsibility of preparing the UBC site plan which was forwarded to Insp. Dingwall's office for approval on November 4, 1997. In September and October, Supt. Thompsett was spending increasing amounts of time on his APEC duties while continuing to reside in Chilliwack and fulfilling his district responsibilities. Some time just after mid-November he came to Vancouver on a full-time basis.

Supt. Thompsett is a long serving and experienced officer with 35 years of service to his credit as of April 1999. He fulfilled assignments in Saskatchewan, Ontario, National Headquarters in Ottawa and in the 1980s was the Officer Commanding at Prince Rupert. From 1989 to 1994 he held that position at Penticton. While in Ottawa, he attended university and received a degree in law with honours. In 1994 he became the Officer Commanding of Chilliwack sub-division which was subsequently renamed as the Southwest Division. At the time of giving evidence in October 1999, Supt. Thompsett was serving as District Officer for the Southwest Division which placed him in charge of 24 detachments from Boston Bar and Manning Park through the Fraser Valley and Lower Mainland, up the Sunshine Coast to Sechelt, and along the Sea to Sky Highway to Pemberton, all of which reported to him.

In April-May 1997, Supt. Thompsett attended a three-week VIP security training course. While stationed in Alberta and at National Headquarters earlier in his career, he had served as a member of the tactical troop at each of those locations. Just before the APEC conference he attended two one-day sessions: one reviewed scenarios that could occur at the APEC conference, and the other provided a briefing for officers designated as supervisors for the APEC conference.

5.4. RCMP Operational Structure for APEC

This completes, for the moment, my consideration of the RCMP planning structure for the APEC conference and I turn now to discuss the actual delivery of the security package for the week of APEC.

5.4.1. Command Centre & Site Commanders

Supt. May testified that during the week of APEC, "the operation unfolded under the command structure of an Operations Commander with sort of a nerve centre, which we called APEC Command, where all the information was fed into that particular nerve centre. Each one of the major planning components was also represented in the Command Centre to provide advice to the Operational Commanders." (APEC Command was officially known as Command Centre.) The Operations Commanders were two senior RCMP officers, Supt. Casey and Supt. Green, and two Deputy Chief Constables of the Vancouver Police Department. They were responsible for putting the security plan into operation during the event. All Site Commanders reported to them, including UBC Site Commander Supt. Thompsett.

Supt. Thompsett was the officer on site at UBC on November 25 who carried responsibility for the control and direction of all site security personnel and for the protection and security of the Internationally Protected Persons. The Commanders in Command Centre were his superiors in the command structure but they were not intimately involved in security preparations leading up to the events of November 25.

Deputy Chief McGuinness, one of the VPD Operational Commanders, had minimal involvement until he attended a briefing on November 16 or 17. His full involvement began with his command role at Command Centre at 6:00 a.m. on November 18.

Supts. Casey and Green were part of the Security Steering Committee that had planning responsibility under the direction of Supt. May. Supt. Casey headed up the "Intelligence/Investigation Division" and Supt. Green's responsibilities related to "visits." Supt. Green's responsibilities did not involve him in a substantial way in UBC security matters, but his membership on the Security Steering Committee gave him some insight into the planning process. Supt. Casey had intelligence information about possible disruptions on campus on November 25 but did not have specific responsibility for the pre-APEC security planning, although he would have had some knowledge of the subject as a result of his Steering Committee membership.

Supt. Green correctly, I believe, summed up the role of Command Centre:

> And the purpose of the Command Centre was basically to coordinate all of the information that was being supplied from different places and different delegations and different sites and locations. And particularly, I guess, to monitor the big picture of what was happening. Most of the people on the sites were – were aware of what was happening at their particular site, but they may not be aware of what was happening in three or four other sites. So, we really in the Command Centre, had the big picture of what was happening, as a result of intelligence that was being supplied to us on a regular basis, you know, video presentations from our own people on site, from our Wescam and those kinds of things. So – and I guess the other issue, was if – if there were contingencies that were happening in one particular location or site that required some assistance or additional resourcing, or we were aware that the crowd was moving close to another, those kinds of things; we would have all of the information on it.

Deputy Chief McGuinness agreed that the Command Centre had an over-all coordinating role with respect to police operations at UBC on November 25 but that the Site Commander had immediate control over security matters on the campus. For all intents and purposes, Supt. Thompsett was in command. Those who had given leadership in the planning for this day for close to two years were now outside the loop, other than being available in an advisory capacity. That included Supt. May and Insp. Dingwall.

5.4.2. Quick Response Teams

Staff Sgt. Hugh Stewart, whose activities on campus on November 25 are addressed later in this report, was present in his capacity as the leader of the Quick Response Teams, a group of just over 170 police officers formed to provide security services as needed and directed during the week of the APEC conference. S/Sgt. Stewart was in no doubt who had command on the ground at UBC on November 25: "everything at that site, sir, fell under the Site Commander," who he identified as Supt. Thompsett. He said "no one takes action, unless it's under the direction of the Site Commander." He was quite correct in that assessment.

5.5. Problems with the Organizational Structure

Two features of the RCMP organizational structure for the APEC conference merit attention:

1. the merging in one person of the two top security planning roles; and
2. the sharp division between the planning for the event on the one hand, and the actual delivery of the security package the week of the conference on the other, which meant that those who had been involved in planning for APEC security for up to two years were without a command role when it came time to put the planning into practice through the operational structure charged with delivery of the security package.

5.5.1. The Dual Role: An Innovation

As explained above, the customary RCMP planning structure for major events called for both a Federal Security Co-ordinator and a Division Operations Commander. In fact, at the 1997 APEC Conference, the two roles were filled by one man, Supt. May.

It appears that the idea of combining the roles on this occasion had been formulated sometime before Supt. May's appointment as Division Operations Commander. On July 11, 1996, he wrote to Acting Commissioner Operations, "E" Division, D.J.A. Brown:

> FEDERAL SECURITY CO-ORDINATOR
>
> The participation of the Force with the Federal APEC Task Force (DFAIT) is usually through the office of the Federal Security Co-ordinator (FSC). All departmental representatives become key players with the APEC Task Force co-ordinating the planning of the total event, of which security planning is an important component. Historically the Federal Security Co-ordinator was responsible for the operational planning and control of the event, representing the Force at all meetings with the Task Force and determining the security level and nature of security resources required.
>
> The Director, International Liaison and Protective Operations, has agreed that the Federal Security Co-ordinator (FSC) role be assumed by the Division Operations Commander (DOC) assisted by an experienced officer who would be the Deputy FSO. The Deputy FSO could then work out of the Federal Asia Pacific Task Force office, when it is established in Vancouver. The dual DOC/FSC role will permit better co-ordination of the event, be in keeping with the Commissioner's direction of delegation to the Divisions and will eliminate any friction or perception of HO members telling the Region how to go about doing their work. I believe that this innovation is a major advancement and will give the Division complete control (and accountability) over all aspects of this major project.

D/Comm. Proke had received this memorandum before he appointed Supt. May as Division Operations Commander on July 17, 1996. Clearly, he approved of the concept as did, subsequently, A/Comm. Martel. As it was described as an innovation, I assume that these roles had rarely, if ever, been merged in one person.

D/Comm. Proke said that the function of the Federal Security Co-ordinator is to design a security plan for an event and the function of the Division Operations Commander is to implement that security plan. From the way events unfolded it is apparent to me that by "implement" he meant putting the security plan in place in preparation for the event itself - not assuming responsibility for the operations side, which delivered the security package during APEC week.

The decision to move to a dual appointment mode had some implications. For instance, the Terms of Reference for the Division Operations Commander included responsibility for developing a security operational plan that would subsequently be given final approval by the Federal Security Co-ordinator. With the combining of these roles, Supt. May was charged with both developing a plan (wearing his Division Operations

Commander's hat) and then approving that same plan (wearing his Federal Security Co-ordinator's hat.)

A/Comm. Johnston testified that his own role was "an oversight position" and that Supt. May was responsible for planning for security at APEC. He agreed that the organizational chart showed that Supt. May reported to him. He was asked to explain that reporting relationship:

> Superintendent May was tasked with developing the plans for APEC, from a security/police perspective, in conjunction with and working very closely with the Vancouver city police.
>
> We developed a joint forces approach to this in view of the fact that a number of the events were going to be held in the City of Vancouver. So we had them working with us in this.
>
> Superintendent May being tasked with developing the plans, he would brief both Deputy Proke and myself on a – on an ongoing basis as to how things were going.
>
> And it was always just an overview of how the planning process was going, and if they were running into too many concerns, and were they able to sort through them.
>
> And he was working very closely with Headquarters Ottawa and our Protective Services there, to ensure that – that the plans were on track and – and covering all of the areas, the required areas.

In every sense, Supt. May held responsibility for two very important planning roles with respect to the provision of security services at the APEC conference.

5.5.2. The Split Between Planning & Delivery

A/Comm. Wawryk described the role of the Federal Security Co-ordinator, saying "he sort of builds a car and hands the keys to someone else who will drive the car".

Those responsible for carrying out the security plan - the Site Commanders, serving under the Operations Commanders at Command Centre during APEC week - are the ones who will drive the car that has been built for them. The "handing over of the car keys" took place November 17-18 as described by Supt. May:

> Q. And just so that we are clear, you were working in the Command Centre up until?

A. I was responsible for planning the security for APEC and once the operation started I turned that responsibility over, for the actual operation, to other people. And I was involved as – in a liaison capacity or a – troubleshooter, or whatever you want to call it.

When the conference began, responsibility for implementing the security plan was assumed by APEC Command Centre headed by RCMP Supts. Casey and Green, and two VPD Deputy Chief Constables, with the Site Commander for each conference site reporting to them.

Supt. May was asked to explain his role during the APEC conference itself and particularly at UBC:

A. I was intimately involved in the development and co-ordination of the APEC plan for two years, the security plan for two years. During APEC itself, I acted as a troubleshooter, advisor, go-between, liaison. If there were any problems developing that they needed my advice on, I was consulted. Particularly at the UBC on November 25th, I was in a liaison capacity.

Q. But you had no decision-making authority?

A. No, I didn't. I wasn't in the command structure at that time.

Supt. May, who had led the planning for this event for two years had no command role during the event itself. He testified that neither did Insp. Dingwall have a command role on campus on November 25.

This sharp division between the planning function and the operations function was clearly a significant contributing factor in the events that gave rise to the complaints being considered here:

1. There was confusion over the authority wielded on the day of the event by officers who had been deeply involved in the planning function but were not then in the command structure.

2. Important decisions were left to be made by people who had insufficient background information because they had been uninvolved in the planning process.

5.5.2.1. Confusion over roles

As would be expected, all officers in command functions and, indeed, all police officers on site to perform security duties were in uniform on November 25. In contrast, Supt. May and Insp. Dingwall appeared on campus in civilian clothes. This caused confusion for some constables who were unacquainted with these officers. This was particularly so in the case of Insp. Dingwall who projected himself on different occasions into a decision-making role. One such occurrence was in the presence of Cst. Joachim Weiss who said he had to assume that Insp. Dingwall was someone in authority. Insp. Perry Edwards, whose participation in the command structure on campus will be discussed later in this report, said he was surprised to learn that Insp. Dingwall was present on site.

S/Sgt. Andrew Bravener said of Insp. Dingwall's appearance on campus under these circumstances:

> He posed a potential problem in that he went forward of the uniformed line without being marked or identified as a policeman.

Supt. May said that he was at UBC on November 25 in a liaison capacity, for consultation, and to give advice if needed. Insp. Dingwall said he was there in a similar capacity. In my judgment, however, he was mistaken in the view that he was there with authority. At one point he said he had the authority to overrule one of the Inspectors that Supt. Thompsett had recruited as one of his two Deputy Site Commanders. In another instance he cited his role as officer in charge of sites and his rank as Inspector as authority to give directions to non-commissioned police personnel at the site. In neither instance did he have that authority. Like Supt. May, he was not in the command structure at UBC on November 25.

5.5.2.2. Inadequate delivery model

Commission Counsel called six expert witnesses in the area of police planning for major events. Two of them were Chief Supt. Stephen French, the Officer in Charge of the Public Order Branch of the London Metropolitan Police Service, and Chief Insp. Michael

Caldwell, in charge of the Public Order Training Centre of that service. They explained the "Gold-Silver-Bronze Command Structure" used in the UK in security planning and delivery for events like the APEC conference. They were firm in the view that combining planning and operations under one structure produces best results. Chief Supt. French said:

> A: What I would like to emphasize is that those that are planning events, those full-time planners that there are within the Metropolitan Police, are undertaking that function on behalf of those within the Command chain. It is not two separate activities. We do not have people that plan events and people that command events. The event planners are working for those within the command chain, at Gold and Silver level, in particular.
>
> Q: What's the rationale for that?
>
> A. Very clearly, you can't - you cannot robustly police an event, a public order event, unless those who are in the command positions have been intimately involved in the development of the plan for the event. That can not be undertaken. In – in my view, and in as far as our procedures are concerned, by a group of people or - or individuals who are - who sit outside that command function. Those within the command function are responsible for the command of an event. And by command we don't mean what they do on the day of the event. Most of the work is, in fact, done in the planning of that event, prior to the actual event itself taking place.

I read that evidence as saying:

- Planning and commanding a public order event are not two separate activities;
- The event planners should work for those who will be in command at the time of the public order event; and
- To police effectively a public order event, those in command positions must have been intimately involved in the development of the plan for the event.

Security services to the APEC event of November 25 were delivered through a model that was totally contrary to what Chief Supt. French held to be necessary to effective policing of such an event. APEC planning and operations were carried out as two separate activities. Those who had planned the event for nearly two years stepped aside as existing RCMP policy apparently required them to do. Command was assumed by officers who came to their task late in the day with neither sufficient knowledge nor meaningful involvement in what had occurred during the planning phase. I will have more to say on this subject later in this report.

6. THE AGREEMENT BETWEEN UBC & CANADA

In 1995 the Government of Canada had sought expressions of interest in hosting the November 1997 APEC meetings. Positive responses were received from Calgary and Vancouver. Vancouver's bid included support from UBC, which was interested in holding the leaders' meeting on its campus. Dr. David W. Strangway, who was then UBC President, wrote to Prime Minister Chrétien on September 25, 1995, extending an invitation to hold the event on campus and advising that the "university community would be proud to participate in such an important event." The Vancouver proposal was accepted and the UBC component was to involve the use of Norman Mackenzie House and the Museum of Anthropology.

6.1. UBC's APEC Coordinating Committee

By 1996, UBC's planning was well underway and UBC established a UBC/APEC Coordinating Committee to facilitate UBC's involvement. The committee was chaired by R.A. Christopher Brown, a federal civil servant then on an executive exchange program, working at UBC. The committee members were all UBC personnel. The committee was concerned with logistics, the disruption of activities on the UBC campus, the opportunities to engage members of the UBC community in APEC-related issues of an academic nature, the development of the two sites, and other related matters. Eilis Courtney sat on the committee and had responsibility for the logistics of the leaders' meeting from UBC's perspective. Ms. Courtney also attended the meetings of ACCO's operations subcommittee. Also involved from the senior level of UBC's administration was Dennis J. Pavlich, a professor of law on administrative secondment to the President's office. Prof. Pavlich held the position of University Counsel.

6.2. The Licence Agreement

A formal agreement between Canada and UBC was negotiated over several months and signed on September 29, 1997. UBC's Treasury Department negotiated on the university's behalf and the agreement, entitled "Memorandum of Agreement," was sent to Prof. Pavlich for his review prior to its execution. UBC's Treasurer and its Comptroller signed on behalf of the university. The agreement was signed on behalf of Canada, as represented by the Minister of International Trade, by Mr. Vanderloo of ACCO, who was the principal negotiator on Canada's behalf. The agreement was referred to during the hearing as a Licence Agreement and that is how I will refer to it in this report. Particularly relevant are the preamble and sections 1 and 6 of the Licence Agreement. They provide:

> **WHEREAS:**
>
> 1. The 1997 APEC Economic Leaders Meeting (the "Event") will be convened at the UBC campus.
>
> 2. UBC has agreed, subject to the provisions of this Agreement, to licence to the Minister certain buildings and their surrounding areas (the "Properties"), in the vicinity of the Museum of Anthropology as shown on Schedule A.
>
> 3. The Event will necessitate the temporary expropriation or partial closure of some UBC buildings, as shown in Schedules B and C, the upgrading of certain facilities, and modification to parts of Norman Mackenzie House.
>
> **1.0 LICENCE OF PROPERTIES**
>
> 1.1 The Minister agrees to licence from UBC the Properties and UBC hereby grants a licence to the Minister for the use and occupation of the Properties for certain periods of time between 0800 July 8, 1997 and 0800 November 27, 1997 (the "Licence Period"), and as more specifically defined in Schedule B and Schedule C.
>
> 1.2 The Minister agrees to pay UBC a licence fee (the "Licence Fee") of $1.00.
>
> 1.3 The Minister agrees to hold the Event during the Licence Period and where the Event finishes after the termination of the Licence Period, the Licence Period shall be deemed to have been extended to the termination of the Event....
>
> **6.0 SECURITY**
>
> 6.1 The Parties acknowledge the importance of careful and prudent planning with respect to the provision of security for the Event. Principal responsibility for all matters relating to security shall belong to the Minister. The Minister shall have the exclusive right to control access to the Properties and every person entering security perimeters shall be subject to compliance with accreditation systems to be designed and administered by the Minister.
>
> 6.2 UBC shall be entitled to access the Properties as they may be reasonably required for servicing and emergency maintenance of UBC facilities, subject to RCMP approval while the leaders are on site.

> 6.3 The parties undertake not to impede any lawful protest and the exercise of free speech outside the Properties and other designated areas, as determined by the RCMP in conjunction with UBC.

Section 6.3 was inserted at the direction of Prof. Pavlich. He said he considered it to be important as it "recognized the rights of people on campus to protest peacefully, and freedom of speech."

Schedule A to the Licence Agreement is a UBC campus map with the following notation at the top of the page: "Note: 'Properties' are circled." Those circled were: Nitobe Memorial Gardens; Pan-Hellenic House; International House; Norman Mackenzie House; Museum of Anthropology; Parking Security; Thea Koerner House; Graduate Student Centre; Faculty Club; Rose Garden Parkade; Chan Centre; Mary Bollert Hall; Green College; Cecil Green House; Cecil Green Coach House; and the Anthropology and Sociology Building. All of the circled buildings are listed on Schedule B, Schedule C or both. Schedule B refers to buildings where full control by ACCO would be required and Schedule C refers to the buildings requiring partial access. Times for the start of closure and the end of closure are listed. On Schedule B, the start of closure of the Museum of Anthropology is shown as 12:00 p.m. on November 24, 1997 and the end of closure as 8:00 a.m. on November 26, 1997.

Ms. Courtney was the one who had drawn the circles around the Properties on the map. She said the circles "were just to indicate the properties and the surrounding areas that would be impacted by the event."

She was asked about the circle around Green College:

> Q: What was your understanding of this in terms of areas of protest, if you look at this schedule? Could people protest anywhere outside of your circles?
>
> A: The circles don't indicate areas - the secured areas. These were areas strictly that would be impacted.
>
> Q: Right.

A: These do not - this does not refer to any areas that would - where protest would or would not be permitted.

Prof. Pavlich said he did not recall seeing Schedule A - the campus map - when he reviewed the Licence Agreement. He was asked what he understood the word "Properties" to mean when he drafted section 6.3:

A: Well, what I understood was that there would be certain areas on campus, particularly where the Prime Ministers would congregate, and neighbouring areas that were important for security.

Q: And so as long as it was outside whatever that security area was, it was your understanding that this clause was applicable? Is that correct?

A: That's correct.

On November 22, the Licence Agreement was amended. The significant changes were:

- Schedule A was replaced with a new map identified as "revised Schedule A." No buildings were circled on the new map. Rather, a heavy line appeared on the new map which otherwise was nearly identical to the original Schedule A. Mr. Vanderloo indicated that the heavy line represented the security perimeter that by then had been finalized. All of the circled buildings on original Schedule A are within what Mr. Vanderloo described as the security perimeter as shown on revised Schedule A, with the exception of Green College, Cecil Green House and Cecil Green Coach House. The perimeter line is drawn along Cecil Green Park Road, clearly placing all the "Green" buildings outside of the security perimeter. There are no buildings within the perimeter that were not circled on the original Schedule. The perimeter line goes along Crescent Road in front of the Chan Building and then cuts across the lawn in front of the Curtis Law Building and down to Northwest Marine Drive where it embraces Gate 3 before it turns back to come along Cecil Green Park Road. The security fence, marking the secure zone, outside of which protesters and others were required to locate, substantially followed the heavy line - the security perimeter as Mr. Vanderloo called it - shown on revised Schedule A. (See the map of UBC showing approximate location of finalized security perimeter identified by the heavy line at Appendix V);

- The start of the period that the Museum of Anthropology would be licensed to the federal government was moved ahead in Schedule B from noon on November 24, 1997 to 6:00 p.m. on November 22, 1997; and
- The reference in Schedule B to the museum was changed to include the museum grounds.

Mr. Vanderloo explained the changes to the map:

> A: When you look at the agreement that we signed at the end of September, there were still a lot of things up in the air in terms of were we using - the Faculty Club or the Student Union for the media centre. And I don't think the definite perimeter had been finalized. So the buildings that are circled on Schedule A of the September agreement were those buildings that either we would utilize during the seminar - or, during the seminar - during the Summit; or buildings that would be impacted by the Summit. There's a schedule which is attached, Schedule B, which, I think explains our access to the buildings. For example, if you look here, at the Cecil Green Coach House, the Cecil Green House, the Green College, those were buildings that we would never have utilized. However, they would have been impacted because of the security perimeter, and it would have been a limited access into those buildings. The same applies to the other buildings just below Cecil Green House and Green College. By the time that the November agreement was signed, the security perimeter had been defined. This was two days before the main event, and I think this is the big change between the two.
>
> Q: So the map that is included as revised Schedule A was intended to confirm the security perimeter that was to be utilized for this meeting?
>
> A: Yeah, at the end of September the security perimeter I don't think had been finalized. In fact, if I recall correctly, Eilis Courtney's letter, the one from mid-October, also raises a concern about getting the final word on the security perimeter.

Mr. Vanderloo was asked to explain what prompted the second change, which brought forward the time of the takeover of the Museum of Anthropology:

> A: Sure. I'd be happy to. I don't have the dates so I'm going to have to refer to the actual days of the week. On the - on the Wednesday, students occupied the Garden behind the Museum of Anthropology. I don't remember the exact number of tents for people, but I think there were three to four tents and six to eight people. There were some concerns expressed on - on - on the - what the impact this would have. Wayne May and I got together and figured, well, it's better not to do anything. The event was still

a few days off and why create a story by removing students without any jurisdiction to do so. By the Thursday, the situation had changed. There were two aspects. I just received a query from PMO, asking what are you going to do about the students? Why aren't they being removed. More importantly, I was receiving quite a bit of pressure from our conference facilities people that this damage was being done to the back garden and also the students had spray painted or soap painted the back windows. I had a meeting with - what's her name - Ruth Phillips, who was the director of the Museum of Anthropology earlier. I still remember her statement quite clearly that the student demonstrator had come to her and said, "We know you have nothing to do with APEC. We respect the integrity of the museum." When they started doing the damage, I became increasingly concerned, and I was under quite a bit of pressure from my conference facilities people. They were - they were concerned about the damage. There's a long history with our work on the Garden at the back of the University. It was a very emotional issue in getting the agreement from the community. We had spent a lot of resources. If there was tremendous damage being done, we didn't have the time to - to - to fix that up, and so I - I concurred with the request from the PMO that something should be done. I would have pushed that myself -

Q: Can I just interrupt you for a moment? When you say, the request from PMO; when you refer to PMO, who are you referring to?

A: Jean Carle.

Q: Jean Carle.

A: He - he called to say, "You know, what are you guys doing with them?" So we - we sat down to - to explore the various options. There were - the first option that was available was to see whether the RCMP had a legal right to take over the property. They checked with Ottawa and they did not. . . .

Q: Sorry, you approached Elaine Kosack from the province?

A: Yes.

Q: And the purpose was to do what?

A: To see whether the Provincial Government had the authority to - for us to take over the property earlier; whether they were willing to get involved to give us that authority, and the answer was no. So we - we commenced discussions with UBC through Chris Brown, and we reached a compromise solution that we would take over the property as of six o'clock on the Saturday.

This issue will be discussed fully in Chapter 11.

7. PRELIMINARY ISSUES

7.1. "Appropriate" Conduct

My Terms of Reference include an assignment to report on whether RCMP conduct was "appropriate to the circumstances." The benchmarks for "appropriate" conduct are found in section 37 of the *RCMP Act* and sections 38 to 58.7 of the *Royal Canadian Mounted Police Regulations, 1988.* These sections of the regulations are known as the "Code of Conduct."

Section 37 of the *RCMP Act* says that it is incumbent on every member of the RCMP:

> (a) to respect the rights of all persons;
>
> (b) to maintain the integrity of the law, law enforcement and the administration of justice;
>
> (c) to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority;
>
> (d) to avoid any actual, apparent or potential conflict of interests;
>
> (e) to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue;
>
> (f) to be incorruptible, never accepting or seeking special privilege in the performance of the member's duties or otherwise placing the member under any obligation that may prejudice the proper performance of the member's duties;
>
> (g) to act at all times in a courteous, respectful and honourable manner; and
>
> (h) to maintain the honour of the Force and its principles and purposes.

The Code of Conduct requires, among other things, that an RCMP member must "respect the rights of every person" and must not "engage in any disgraceful or disorderly act or conduct that could bring discredit on the Force."

Inappropriate conduct could constitute a breach of the *RCMP Act* or the Code of Conduct or the common law. If so, the member could be held to account before a court or administrative tribunal.

However, conduct that does not amount to a breach of statute or common law could still constitute a failure to meet reasonable standards that ought to apply to an effective and efficient security operation, whether the conduct results from incompetence, poor planning, a lack of ordinary judgment, or an absence of common sense. For the purposes of my Terms of Reference, such conduct could be inappropriate to the circumstances in which it occurred.

7.2. Charter Rights

My Terms of Reference also include an assignment to report on whether the RCMP conduct in question was "consistent with respect for the Fundamental Freedoms guaranteed by section 2 of the *Canadian Charter of Rights and Freedoms*." The *Charter* sections that are relevant to this report are set out in Appendix VI.

This raises the question: Do I have the jurisdiction to interpret and apply the *Charter* and determine whether the RCMP committed *Charter* violations? I have considered the parties' extensive submissions on this issue and have concluded:

1. It is not necessary to determine whether this Commission is a "court of competent jurisdiction" for the purposes of granting *Charter* remedies as I will not be granting such remedies nor will I be striking down legislation or making decisions which will affect any person's legal rights.

2. I am entitled to consider the complainants' *Charter* rights in deciding whether the RCMP conduct was appropriate to the circumstances because the Commission has jurisdiction over the police officers whose conduct has been brought into question and the complaints that have been made.

3. Although the Terms of Reference direct the Commission to assess RCMP conduct against section 2 of the *Charter*, section 37(a) of the *RCMP Act* says that it is "incumbent on every member . . . to respect the rights of all persons." Clearly this includes the obligation to respect all *Charter* rights.

4. As this Commission cannot determine civil or criminal liability, it cannot make legal determinations as to whether RCMP members violated the *Charter*. In my view, the Terms of Reference have been carefully crafted to ensure that I make only "findings of fact" and evaluate whether RCMP conduct was "consistent

with respect for" the complainants' *Charter* rights. Although this may seem like a distinction without a difference, it is in accord with the following passage from *Krever*:

> . . . . Similarly, commissioners should endeavour to avoid making evaluations of their findings of fact in terms that are the same as those used by courts to express findings of civil liability. Despite these words of caution, however, commissioners should not be expected to perform linguistic contortions to avoid language that might conceivably be interpreted as importing a legal finding.

7.3. Freedom of Expression on Government Property

Freedom of expression on government property and the right of the government to limit that freedom are issues that arise throughout this report. The UBC campus is not government property, but under the licence agreement described in Chapter 6, parts of the campus effectively became government property for a period of time during the APEC conference.

Section 2(b) of the *Charter of Rights and Freedoms* guarantees everyone freedom of expression in Canada. However, some limitations on that freedom are permitted and clearly, during the events at issue here, free speech was curtailed in some instances. The question is whether those limits on free speech were permissible under the *Charter.*

Section 1 of the *Charter* says that the *Charter* guarantees the rights and freedoms set out in it subject only to such "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The extent of these justifiable limits in various situations has been considered in many judicial decisions.

The Supreme Court of Canada considered the government's ability to limit expressive behaviour on government property in *The Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R 139. In that case some people who had been prohibited from promoting a political cause at an airport asked the court to declare that their freedom of expression had been denied.

The Supreme Court stated that the government, as owner of public property, does not have the same right that an owner of private property has, to restrict expressive behaviour on that property. Section 2(b) might not apply to all expression on all government property, but generally, government property must be available as a forum for public expression unless there are reasons that justify denying access for that purpose.

The court agreed that the plaintiffs' freedom of expression had been infringed without justification but gave six separate sets of reasons describing different analytical approaches to the issue. The central judgments were delivered by Lamer C.J., L'Heureux-Dubé and McLachlin JJ.

- Lamer C.J. (Sopinka and Cory JJ. concurring) held that section 2(b) protects only expression that is compatible with the "principal function or intended purpose" of the government property. For example, no one would suggest that an individual could, under the aegis of freedom of expression, shout political messages in a library. Only if it is established that the expression in question is compatible with that function does it become necessary to consider whether the infringement on the right of expression was justified.
- At the other end of the spectrum, L'Heureux-Dubé J. noted that the "distinctive nature of government property whittles away at the application of trespass law." She held that all non-violent expression on government property is protected by section 2(b) of the *Charter*. Restrictions are lawful only if they can be justified under section 1 of the *Charter*. L'Heureux-Dubé J. did concede that section 2(b) does not provide a right of access to all public property, such as internal government offices, air traffic control towers, prison cells and judges' chambers.
- Lastly, McLachlin J. (La Forest and Gonthier JJ. concurring) took an intermediate approach. She held that the protection afforded by section 2(b) of

the *Charter* lies somewhere between two extremes: absolute government control of expression on government property on the one hand, and presumed protection for all expression on government property on the other. She agreed with Lamer C.J. that compatibility with function is a relevant factor, but said that it should only be taken into account in deciding whether the restriction on the right is justifiable under section 1, and not in first determining whether the expression is protected under section 2(b).

- McLachlin J. concluded that, in determining whether the expression is protected under section 2(b), the first step is to consider whether the government's purpose in imposing the restriction is aimed at the *content* of the expression. If so, section 2(b) is violated. If the restriction is aimed not at *content*, but at the avoidance of undesirable *consequences* of the expression, the plaintiff may establish a violation of section 2(b) by demonstrating a link between the expression on government property and one of the purposes underlying the guarantee of freedom of expression:
    - the pursuit of truth;
    - participation in social and political decision-making; and
    - the encouragement of diversity in forms of individual self-fulfilment by cultivating a tolerant, welcoming environment for the conveyance and reception of ideas.

In *Weisfeld v. The Queen* (1994), 116 D.L.R. (4th) 232, a case prompted by the erection of a peace camp on Parliament Hill, the Federal Court of Appeal concluded that the erection of the peace camp did constitute "expression." In determining whether that expression was protected under section 2(b) of the *Charter*, Linden J.A. considered the three tests set out by the Supreme Court of Canada in *Commonwealth* and said that, under any of those tests, the plaintiff's conduct amounted to constitutionally protected expression: the erection of the tent was not incompatible with the "function" of Parliament Hill and there was "clearly a link between the principle of participation in social and political decision-making which underlies our constitutional protection of freedom of expression and the use of the grounds in front of parliament to effect such participation." Therefore, the erection of the shelter was constitutionally protected expression.

Linden J.A. found that the government's actions were "prescribed by law" for the purposes of section 1 - the law being both the regulations under which the protester had been arrested and also the common law property right to prevent nuisance and trespass.

7.3.1. The Proportionality Test

What remained for determination in *Weisfeld* was whether the government's actions constituted a "reasonable limit" on the plaintiff's constitutional rights. To answer that question, the court applied the test developed by the Supreme Court of Canada in *R. v. Oakes*, [1986] 1 S.C.R. 103, commonly known as the *Oakes* test, or the "proportionality" test. Under the proportionality test, the following criteria must be satisfied if an infringement of a *Charter* right is to be justified or "saved" under section 1 of the *Charter*:

1. the objective that the limitation is designed to promote must be sufficiently important to warrant overriding a constitutionally protected right or freedom. At a minimum, the objective must be pressing and substantial in a free and democratic society;
2. the government must satisfy each element of the "proportionality" test; that is:
    (a) the measure limiting the *Charter* right must be "rationally connected" to the intended objective (i.e., it must not be arbitrary, unfair or based on irrational considerations);

(b) the measure must "minimally impair" the *Charter* right. (The court must consider whether the government could "reasonably have chosen an alternative means which would have achieved its objective as effectively as the means actually chosen"); and

(c) the effects of the measures must be "proportional" to the significance of the objective. (Even if an objective is "pressing and substantial," it should not override a *Charter* right if the effect of the measures used to accomplish that objective severely compromises an individual's rights.)

In addressing whether the infringement was designed to meet a pressing and substantial objective, Linden J.A. noted that the government's objectives were twofold: to allay safety, health, maintenance and security concerns; and to address issues of aesthetics and symbolism. He referred to the grandeur of the Parliament Buildings with their great expanse of lawn and found that keeping Parliament Hill "in a clean and aesthetically pleasing condition" was a legitimate government objective. In the result, Linden J.A. held that the removal of the peace camp was a justifiable limit on the plaintiff's section 2(b) rights.

There is a recent Ontario decision which squarely addresses some of the issues addressed in this report, particularly in Chapter 11. In *R. v. Behrens* [2001] O.J. No. 245 (Ont. Ct. Just.), some protesters had been banned from Queen's Park in Toronto after defacing the wall of the legislature building with a water soluble liquid. The Speaker of the legislature banned them from the grounds. They returned later and demonstrated peacefully but were charged under the *Trespass Act.*

The primary issue before the court was whether the defendants' *Charter* rights to participate in a political demonstration on government property took precedence over the Speaker's common law right under the *Trespass Act.*

The court reviewed the law of freedom of expression, including the *Commonwealth* decision, and decided that, under any of the three approaches in that case, the defacing of the wall was not protected expression. Rather, it was a form of vandalism or violent expression, incompatible with the function of the building. Therefore, the Speaker was justified in banning the protesters.

However, with respect to the peaceful demonstration, the court held that the Speaker's ban unjustifiably infringed the protesters' rights to engage in peaceful protest. Because the defendants' activities on that occasion were constitutionally protected, the *Trespass Act* had to yield to the *Charter* and, as a result, the charges against the defendants could not stand.

In my view, this decision makes it clear that police authority to remove and arrest trespassers on government property pursuant to the *Criminal Code* must, unless an interference with individual liberties is justified in the circumstances, yield to the *Charter* rights of protesters who are peaceably demonstrating on government property in a manner that is consistent with the ordinary use of that property.

8. WAS THERE A "CRACKDOWN" AT UBC?

Complainants' counsel allege that there was "an unprecedented RCMP crackdown on student demonstrations" on the UBC campus on November 25 and the days immediately preceding. Counsel's closing written submission outlines the basis for this allegation by posing a rhetorical question:

> How is it that a prominent student activist was snatched off the street and spirited away in an unmarked car the day before the leaders' visit, that paper and cardboard signs expressing dissent were snatched from students, that a law student was tackled, handcuffed and imprisoned for merely declining to relinquish his sign, that a Tibetan flag, a powerful symbol of freedom and an irritant to the Chinese government, was removed from a campus building contrary to a prior agreement with the RCMP command, that students were arrested and imprisoned for apparently doing nothing more than using radios or megaphones, that accredited members of the press were stripped of their media accreditation because they were "sympathetic" to the protesters, that patently unlawful release conditions were imposed on some of those arrested, and that noxious weapons were used repeatedly and indiscriminately to disperse peaceful gatherings of students?

Each of the eight scenarios recited within that question are reflected in the 17 categories of complaints, each of which is individually addressed in this report.

Counsel then asks:

> Did these events occur because Canada's revered national police force was ill-prepared, poorly trained, unfamiliar with Canadian law and overzealous? Or is the explanation more disturbing - that the Canadian government, anxious to make a good impression on at least one dictator who made it clear that his visit and future bilateral relations depended on the suppression of demonstrations, created a climate in which visible displays of dissent would not be tolerated?

I have concluded that some instances of RCMP conduct complained of were not appropriate to the circumstances. I have further concluded that in some of those instances the conduct was not consistent with respect for the fundamental freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*.

The conduct that I have found to be inappropriate, taken as a whole, does present the appearance of a police "crackdown" on student demonstrations at UBC. Without adopting the precise language quoted above, I conclude that Complainants' counsel have correctly identified the two most likely explanations for that conduct. In other words, either:

1. aspects of police performance on and around November 25 fell below an acceptable and expected standard of competence, professionalism and proficiency; or
2. the Canadian government, motivated by political considerations involving appeasement of then President Suharto of Indonesia, signalled to the RCMP, either overtly or otherwise, that they ought to perform as they did in order to curtail demonstrations and stamp out visible dissent.

Complainants' counsel contend that the second explanation accounts for the events complained of. Hundreds of the hours that they were on their feet and volumes of their written submissions were devoted to pursuing that second explanation. Scant attention was paid to the alternative.

I turn now to address the issue of political intervention in the planning for security for November 25, and the impact that had on events.

9. POLITICAL INTERVENTION

9.1. Protests Expected

President Suharto's leadership of Indonesia was of a brand that could be expected to invite vigorous protest on a Canadian university campus. Complaints' counsel described President Suharto's regime as one marked by corruption, abduction, torture, slaughter and the suppression of human rights.

It was well known that the APEC conference would draw significant demonstrations at UBC, largely sparked by the anticipated presence of President Suharto. The UBC administration supported students' involvement in peaceful protests and demonstrations. President Piper said it was important for UBC to allow dissenting opinions to be openly expressed and to ensure that protesters would have the opportunity to see and be seen by the visiting leaders and to express their views anywhere outside of the secure zone. To that end, Prof. Pavlich insisted on including a provision in the Licence Agreement - section 6.3 - by which the parties agreed not to impede lawful protest outside the designated secure areas.

In contrast to UBC's insistence on openness, the Indonesian government was so concerned about potential protests that it threatened to boycott the APEC conference. This the Canadian government wanted badly to avoid.

I agree with the following assessment of the situation made by Complainants' counsel in closing written submissions:

> When word of the likelihood of demonstrations in Vancouver reached Suharto's advisors in Jakarta, they reacted with extreme dismay and became preoccupied with the issue in the months leading up to APEC. They threatened to boycott the APEC conference if demonstrators would be permitted to embarrass their president, a move which from the Canadian government's perspective could undermine the credibility of the conference and damage the bilateral relations between the two countries.

There was lengthy discussion at the hearing about what the Indonesian officials meant by the need to avoid "embarrassment" to their President.

- On one hand, Complainants' counsel were firmly of the view that, because of a desire to appease the Indonesians and ensure President Suharto's attendance at the APEC conference, the Canadian government made a commitment that no signs of protest would occur in his presence. Complainants' counsel submitted that the documentary evidence discussed below goes a considerable distance toward establishing the accuracy of this interpretation of the Indonesian position, and that Canada made such a commitment. In furtherance of that commitment, counsel alleges that the federal government gave politically motivated orders to the RCMP to "crack down" on the protesters.
- On the other hand, senior Canadian government officials who were responsible for securing President Suharto's attendance testified that when the Indonesians spoke of avoiding the "embarrassment" or "humiliation" of their President, and the need to protect his "dignity", they simply meant that no demonstrations should be permitted in close proximity to him, so as to avoid a possible physical assault.

What the Indonesians may have wanted is not in issue here. What is in issue is whether there was, in fact, a "crackdown" involving inappropriate RCMP conduct and, if so, whether that conduct was attributable to directions given by the federal government in order to meet what were seen as Indonesian concerns.

9.2. Canada Acts to Ensure President Suharto's Attendance

Canada, as host country, unquestionably wanted to have all 18 APEC economies represented by their leaders at the APEC conference. Over the months leading up to the APEC conference, Canada paid significant attention to Indonesia's threatened boycott and made substantial efforts to ensure President Suharto's attendance. Ambassador Smith explained that since 1993 the leaders of all member economies had attended these conferences. President Suharto's participation was particularly significant, he said, because he was the senior member of the Association of Southeast Asian Nations. President Suharto was host of the 1994 meeting when the goals for APEC were laid out, and he was one of the few members from a developing country who was strongly in favour of trade liberalization. "He was seen as somebody that would play an important role," Ambassador Smith told the hearing.

The efforts of the Canadian government to ensure President Suharto's attendance included the following:

- In July 1997, Foreign Affairs Minister Lloyd Axworthy went to Jakarta and met separately with President Suharto, with Indonesia's Foreign Minister Alatas, and with the Human Rights Commission. Ambassador Smith was present at each meeting. He testified that Mr. Axworthy told President Suharto his security would be assured at the APEC conference and that Mr. Axworthy conveyed the same message to the Indonesian Foreign Minister.

- On September 3, 1997, Mr. Axworthy wrote a letter to Foreign Minister Alatas which contained the following passage:

  > With respect to security arrangements for the APEC Economic Leaders Meeting (AELM) in Vancouver in November, I would like to extend to you my assurance that the security concerns of the Indonesian government will be given the utmost consideration. In addition, as promised during our discussions in Jakarta, I have conveyed the security concerns of President Suharto to Prime Minister Chrétien.
  >
  > A senior Royal Canadian Mounted Police officer will be assigned as personal security officer to your President and, together with dedicated body guards, will accompany the President during the entire time he is in Vancouver . . . . will also be at his disposal. With a police escort that will be provided throughout and additional route security measures, I am confident that we will provide for free and unobstructed movement of the President.

On September 12, 1997, Ambassador Smith personally delivered the letter to senior officials in the Indonesian Foreign Ministry and orally assured them that President Suharto's safety would not be compromised.

- In September 1997, Mr. Bartleman had become concerned about President Suharto's possible boycott of the APEC conference. He recommended a meeting between Prime Minister Chrétien and the Indonesian Ambassador to Canada, Mr. Parwoto. The meeting took place on September 22, 1997 at the Prime Minister's offices. Mr. Bartleman testified that the Prime Minister went right to the point, concentrating on security issues, and that the Prime Minister told Mr. Parwoto that the safety and dignity of all leaders attending the APEC conference, including President Suharto, would be assured during their visit to Vancouver.

- On October 3, 1997, Prime Minister Chrétien wrote to the heads of the APEC economies, formally inviting them to the November 1997 meetings. On the advice of his officials, and because of the continuing uncertainty regarding President Suharto's attendance, the following paragraph was inserted into President Suharto's invitation alone:

> I understand you have had discussions with my Minister of Foreign Affairs on the arrangements for the Vancouver meetings. I have directed my officials to spare no effort to ensure that appropriate security and other arrangements are made for your stay in Canada as our guest. I recall warmly my participation in the 1994 meeting you hosted and the leadership you provided in developing the Bogor Declaration, which has been so crucial in advancing APEC's agenda. I hope that I may count on your support, advice and encouragement to ensure that the Vancouver meeting is also a success.

- On October 7, 1997, Ambassador Edwards personally delivered Prime Minister Chrétien's letter to President Suharto in Jakarta. Ambassador Smith was also present. (Although they discussed the APEC conference, President Suharto did not raise the security issue on this occasion. As the ambassadors were leaving, a senior Indonesian government minister indicated to Ambassador Edwards that he would see him in Vancouver. The Canadians took this as a sign that the Indonesian delegation would attend the APEC conference as of course, they did.)

- Later the same day, Ambassadors Edwards and Smith attended on Foreign Minister Alatas and others. The Indonesians indicated their continuing concerns about what might occur in Vancouver. As recorded in a report on the meeting prepared and approved by Ambassador Smith:

  > (Mr. Edwards) noted that the Canadian host would take all the precautions necessary to protect the dignity of its guests. Canadian law does not permit however the banning of peaceful demonstration or expression of views.

9.3. Propriety of Canada's Efforts

I have two comments to make on the sequence of events I have just described.

Firstly, the efforts by Prime Minister Chrétien, Mr. Axworthy, Mr. Bartleman and the two ambassadors to allay President Suharto's security concerns were proper, acceptable and to be expected of the host of a significant international event such as the APEC conference. As explained by Ambassador Edwards, it was particularly important to Canada that President Suharto attend the APEC conference. It is unrealistic to expect that, as host of the APEC conference, the Prime Minister's Office would take no interest whatsoever in the security concerns of a foreign leader, particularly where failing to provide appropriate assurances might result in a boycott, to the detriment of the conference in general and Canada's economic aspirations in particular.

At four previous international summits hosted by Canada, Ambassador Edwards had carried the responsibilities assumed by Ambassador Vanderloo in respect of the APEC conference. I accept the following answer he gave to a question about the involvement of the Prime Minister's Office in respect of security concerns at those previous international meetings:

> Well, there's always an interest taken by the Prime Minister's Office in security issues. These are the leaders of important countries to Canada. The Prime Minister is the host. He takes an interest in the security arrangements put in place for them. And even though the RCMP is responsible, in the last analysis, for security decisions, the Prime Minister's Office takes an interest in what those decisions are, obviously. But more importantly, there is also this element of what I would call the dignity of the leaders being observed, the dignity of the event itself, important international meetings, especially conferences. And perhaps the most sensitive issue of all, and the one we're dealing with here, in fact, is the interface between the rights of individuals to express their views, to assemble freely, and to demonstrate, and so forth; with the need for protecting leaders, or ensuring that the sites where meetings take place and where business is done, that those sites are preserved, the dignity of that site is preserved, and the work is done. We want to make sure that the facilities themselves and the arrangements put in place are the best possible for getting the result that the meeting is intended to have.

Secondly, the message communicated by Ambassador Edwards to Foreign Minister Alatas at the October 7, 1997 meeting is consistent with the message that I accept was conveyed consistently by Canadian officials to Indonesian officials over the months leading up to the APEC conference: although President Suharto's security and dignity would be protected, there was no guarantee that he would not encounter peaceful protests advancing political views inconsistent with his own. I agree with the following two paragraphs of the written submission of counsel for the Attorney General of Canada, the first of which is based on the evidence of Ambassador Edwards and Mr. Bartleman and the second on that of Ambassador Vanderloo:

> Indonesian officials were given no assurances beyond the protection of Suharto's security and dignity. Indonesian officials were informed that the Canadian Government could not guarantee that they would not see demonstrators, although protesters would not be permitted in close proximity.
>
> ACCO officials attempted to convince the Indonesians only that security arrangements for the APEC conference met international standards. Canada could not guarantee an absence of demonstrators outside the secure zone.

Even if the Indonesians wished to avoid the possibility that President Suharto might be "embarrassed" by the mere presence of peaceful protesters, the Canadian government did not guarantee that this type of "embarrassment" would not occur. To the contrary, the Indonesians were specifically told that under Canadian law peaceful protests could not be prohibited.

9.4. Protecting Visiting Heads of State

Although the Canadian government did not guarantee that President Suharto would not be embarrassed, it is my view that in appropriate circumstances the federal government and the RCMP may be justified in taking limited steps to ensure that visiting heads of state are not subject to certain types of embarrassment or affronts to their dignity. For example, there is no doubt that they may, and indeed must, take steps to ensure that a visiting leader is not subject to a violent physical assault or a more symbolic act, such as a flying pie. This flows directly from the obligation to ensure the security of the visiting leader's person. I also believe that if the government, as the elected representative of the people, determines that the success of an event is in Canada's best interests, it may take steps to prevent visiting leaders from being grossly humiliated by, for example, illegal acts, in order to ensure that the event is successful and no damage is done to international relations. In this rather narrow sense, the federal government and the RCMP may act to protect the visiting leader's dignity.

Generally, however, neither the federal government nor the RCMP may curtail political criticism by protesters. The right to express political views lies at the very core of the freedom of expression provided for in the *Charter*. The fact that a visiting leader may be merely upset or angered by the expression of contrary political views and criticism by Canadians does not justify the suppression of such expression. I note that, in its report regarding President Jiang Zemin's visit to New Zealand in 1999, the New Zealand Justice and Electoral Committee reached a similar conclusion.

9.5. Allegations of Government Interference

Complainants' counsel identified what they describe as "the four most obvious instances" of inappropriate and direct government interference with the RCMP. One of the four, the "early takeover of the Museum of Anthropology," occurred three days prior to President Suharto's arrival on campus and is discussed in Chapter 11 of this report. The remaining three instances relate directly to the events of November 25 and I will discuss them here under headings that I believe describe them acceptably: the "security or event perimeter," the "demonstration area" and the "noise free zone."

The government representative who participated in each of these matters was Jean Carle, then Director of Operations in the Prime Minister's Office. Mr. Carle acted as liaison between the Prime Minister's Office, ACCO, the Department of Foreign Affairs, the RCMP and foreign bodies. Mr. Carle reported to Jean Pelletier, Chief of Staff in the Prime Minister's Office who, in turn, reported to the Prime Minister. Mr. Carle had access to the Prime Minister to discuss APEC matters as the need arose.

Mr. Carle visited the UBC campus on August 27, 1997, and again on November 13. During both visits there were discussions about the security or event perimeter, the demonstration area and the noise free zone.

9.5.1. *Security Perimeter or Event Perimeter*

As part of the planning for the APEC leaders' meeting, the RCMP was required to establish a security perimeter at UBC, behind which the Internationally Protected Persons would be protected. This would be a secure zone to which the public would have no access. There is no dispute that this responsibility was the RCMP's alone. However, the Licence Agreement with UBC did provide that the RCMP would consult with UBC on this matter, it being UBC's understanding that the secure zone would only be as large as necessary to address security concerns, and that students would be permitted to demonstrate anywhere outside the secure zone.

Complainants' counsel asserts that, to accommodate what they say was the federal government's desire to shield President Suharto from the sights and sounds of protest, the RCMP enlarged the perimeter for reasons unrelated to security. The "enlarged" perimeter was described during the hearing as the "event perimeter."

In his testimony, A/Comm. Wawryk defined an "event perimeter" as the product of all the deliberations of the federal host in declaring the perimeter around a given site and a "security perimeter" as the product of police thinking about what they need to secure the Internationally Protected Persons.

9.5.1.1. August visit to UBC

During his August 27 visit, Mr. Carle was accompanied by Peter Donolo, also from the Prime Minister's Office. The two men toured all of the sites where APEC events were to occur, and were accompanied for the UBC portion of the tour by Mr. Vanderloo, Supt. May and Insp. Dingwall.

According to Mr. Vanderloo, a UBC representative would also have been along on the tour. Given the evidence of all of the witnesses from UBC, Mr. Brown is the only UBC representative who could have been present but he had no recollection of being there. Mr. Brown played an active role during Mr. Carle's November 13 site visit but he did not recall meeting Mr. Carle at any time whatsoever prior to that date. I am satisfied that no UBC representative was present at the August 27 visit, at which time Mr. Carle communicated information that UBC would have regarded as significant, had a university representative been present to hear it.

The five men stood on the south side of the Chan Centre near the Rose Garden, across Northwest Marine Drive from the Museum of Anthropology. They had a preliminary map that indicated the location of the proposed security perimeter. The perimeter had not yet been finalized but was almost identical to the perimeter which appeared on the first of several maps prepared by Sgt. Koleyak in October or November, 1996.

Mr. Carle was vocal and firm that what was to occur on campus on November 25 was a "retreat" that would require a calm environment, conducive to work being done by the world leaders in attendance. Supt. May and Insp. Dingwall testified that Mr. Carle said this event was to be a private retreat and there was to be no undue noise or disturbances by demonstrations.

Insp. Dingwall said that Mr. Carle's concern was that the noise made by protestors would carry and that the use of loud hailers would disrupt the meeting at the museum. Insp. Dingwall agreed that Mr. Carle's concern about potential noise was not a security issue. After the site tour, Insp. Dingwall prepared what he described as a "general note to file" about the day's activities, which had consumed five or six hours. With reference to the discussion near the Chan Centre he recorded:

> Jean Carle does not want the demonstrators close at all, which will mean moving back our perimeter.

Insp. Dingwall acknowledged that his reference to the "perimeter" was to the "security perimeter." He sent the note by e-mail to the five members of the core APEC Planning Committee, which included Officers Koleyak and Merkel, and copied it to Supt. Thompsett. Mr. Vanderloo agreed that Insp. Dingwall's note was accurate on the noise issue and confirmed that Mr. Carle's desire to push back the security perimeter was intended to create a "retreat" atmosphere, and had nothing to do with security.

According to Mr. Vanderloo, ACCO's contractual obligation to UBC was twofold:

1. Beyond the security perimeter, there would be no problems about access; and
2. UBC students were to be provided with a demonstration area with a line of sight to the leaders.

9.5.1.2. A "retreat-like" setting

In the context of the annual meetings of APEC leaders, the retreat portion of the conference had a special place. It had become a tradition to hold this event in an isolated location and it was a tradition that APEC conference planners wished to continue.

Previous APEC leaders' retreats had been held in the U.S. on an island near Seattle; in Indonesia at a site 40 kilometres outside of Jakarta; at an abandoned U.S. naval base in the Philippines that was inaccessible to the public; and in Japan on castle grounds that were sealed off to create what Ambassador Edwards called "a very private setting." He acknowledged that one thing those previous locations had in common was the degree to which they could be insulated from the general public: he described the desired location as "a very informal setting removed from the real world as it were."

Mr. Pelletier explained that there were always two sites used for APEC conferences, and in this case "the retreat site was the university grounds in Vancouver and in our view, had to be treated as a retreat site."

However, those who thought that a "retreat-like" setting removed from the real world could be achieved for such a meeting on a Canadian university campus, were seriously mistaken.

I am satisfied that when it agreed to host the November 25 meeting on campus, UBC was not informed of government plans for a "retreat-like" event. The concept never emerged in the negotiations that led to the selection of Vancouver as host city and Counsel for the Attorney General of Canada acknowledged that the Licence Agreement did not mention it. UBC was under the impression that the secure zone would be no larger than necessary to meet security concerns and that opportunity would be provided for meaningful protest. Clearly, the parties to the Licence Agreement had different intentions.

I am also satisfied that, had UBC been advised from the outset that the government's objective was to create a "retreat-like" atmosphere, UBC would never have contracted as it did. Prof. Pavlich sincerely believed that the insertion of section 6.3 into the Licence Agreement would ensure a meaningful opportunity for lawful protest and the exercise of free speech by allowing protesters to see and be seen by the APEC leaders as they passed by in their motorcades. I am satisfied that, as late as October 10, President Piper felt that such a line of sight would be made available. On that date, she wrote the Prime Minister a letter that opens in the following way:

> Following our brief discussions on Thursday, October 2 in conjunction with the launch of the APEC conference Season, I am writing to let you know about UBC's extensive interests in the APEC process. These interests extend beyond provision of the venue for the APEC Economic Leaders Meeting to involvement with the substantive issues of the meeting itself. First, let me express how honoured we are to have this event at the Museum of Anthropology and Norman Mackenzie House, and how highly we value the international recognition the University will receive as a result. Building on this, UBC is engaged in a wide-ranging program of academic, teaching and research initiatives related to the APEC agenda. These initiatives illustrate UBC's commitment to long-term involvement in the Asia Pacific region and further strengthen the University's position as the leading institution in Asia Pacific affairs in Canada.

After listening to President Piper on the witness stand, I am satisfied that she was unaware that the meeting referred to in her letter was to be held in a setting "removed from the real world."

In responding to submissions by counsel for the Attorney General of Canada, counsel for the B.C. Civil Liberties Association stated:

> . . . the Attorney General points out that "Other host countries chose retreat sites in remote areas where public access was completely denied." We agree that if the goal of conference organizers is to achieve a peaceful, retreat-like setting, it is logical to choose a retreat site in a remote area. The attempt to impose a similar level of tranquillity on a crowded, urban, University campus as had previously been achieved on a remote island, the grounds of a castle, and an abandoned naval base was obviously one of the factors that contributed to the unlawful violations of protesters' rights that occurred at UBC.

I am in general agreement with that submission and would add that the attempt to hold a "retreat" at the UBC campus may well have contributed significantly to the events of November 25, 1997.

The description of the leaders' meeting as a "retreat" did become part of the terminology used to describe it: it was used by the Deputy Director of ACCO at a public information meeting on October 7, and it was in prominent use at a November 13 tour on campus that I will review in my discussion of the "demonstration area."

9.5.1.3. Accommodating non-security concerns

There is conflicting evidence as to whether the "security perimeter" was enlarged for reasons unrelated to security, such as a desire to prevent noise from disrupting the leaders' meeting, or to prevent the APEC leaders from seeing protesters.

There is little doubt that the federal government believed that it was entitled to set the "event perimeter" with reference to considerations other than security. Mr. Carle said that, at the August 27 meeting, he suggested that the "retreat" should not be disturbed by "signs or protestors in the near vicinity of the working area." Mr. Vanderloo testified that ACCO's first priority was to create the proper ambience for the leaders' meeting and that they had authority to determine the location of the "event perimeter" and to enlarge it beyond what was strictly necessary from a security perspective. He confirmed that, at the August 27 meeting, Mr. Carle asked the RCMP to go back to the drawing board and move the perimeter to accommodate the desire by the Prime Minister's Office for a quieter, retreat-like setting, as well as a media centre.

The RCMP also appeared to be under the impression that the federal government, as host of the event and licensee pursuant to the Licence Agreement, could place the perimeter wherever it wished, provided that the RCMP's security requirements were met. Supt. May testified that, although the RCMP was the ultimate arbiter of what areas had to be secured to meet security concerns, ACCO and UBC had the authority to establish a larger perimeter if they wished. Insp. Dingwall's testimony was consistent with that of Supt. May.

Two expert witnesses suggested that there is nothing improper about a police force factoring non-security concerns into the establishment of a perimeter. Chief Supt. Stephen French, head of the Public Order Branch of the Metropolitan Police in London, England, was asked how a host's intention of having a tranquil, "retreat-like" setting would factor into the security requirements for a security perimeter. He replied:

> Well, I think there's a -- in a very practical sort of way, if -- if the venue is to be made suitable for the purpose, i.e., suitable for discussions, talks, whatever the purpose might be of, then quite clearly the environment has got to be such that it can enable that to happen. They -- that may not necessarily have a security implication to it, but I dare say that there again is a compromise between the needs of security and the needs of the participants in the event.
>
> But obviously from a Police perspective, we're concerned about the security side rather than the tranquillity of the event. But I can understand obviously, that there needs to be – if – if you can't actually maintain the dignity of the event and enable it to happen, then there's probably no point in having it at that particular location.

Chief Supt. Robert Milton, Security Commander for the Special Branch of the Metropolitan Police, holds responsibility for the personal protection of VIPs and Internationally Protected Persons visiting the United Kingdom. He testified that, if a host wished to enlarge the security perimeter to achieve a retreat-like setting, his only question would be: "does that affect security?" If so, his security concerns would have to be met. If it did not affect security, his response would be: "fine ... that's your decision." This is the same approach taken by Supt. May and Insp. Dingwall.

There is no doubt that the RCMP were responsible for establishing the security perimeter. The primary issue for my consideration is whether, in establishing the perimeter where they did, the RCMP acted inappropriately or in a manner inconsistent with the *Charter* rights of protesters. If they did, a further issue is whether they did so at the direction of the federal government, to accommodate governmental concerns unrelated to security. I will return to this matter in Chapter 13.

9.5.2. Demonstration Area

Throughout the planning for the leaders' meeting, one of UBC's primary goals was to ensure that students would have an area where they could see and be seen by the visiting leaders. This area was described by UBC personnel as a "line of sight" gathering place.

On October 17, Ms. Courtney of UBC faxed a letter to Supt. Thompsett in Chilliwack describing an October 14 meeting between UBC and the RCMP. The letter closed with the following expression of concern:

> As I did at the meeting, I would like to register serious concern on behalf of the University that there is no designated area for protestors to gather. In all our negotiations, this has been an issue and is a major concern to our President and to our Board of Governors. In our agreement with the Federal Government, Section 6.3 states "The parties undertake not to impede any lawful protest and the exercise of free speech outside the Properties and other designated areas, as determined by the RCMP in conjunction with UBC." UBC has worked very closely with the RCMP in attempting to find an agreeable boundary for the secure zone. We have looked at various areas for protestors but none have reached consensus between both UBC and RCMP. Chris Brown and I met with Associate Vice-President Dennis Pavlich today to discuss this concern and he has asked us to convey to the RCMP that it is unacceptable to the university to have no area of protest within sight of the leaders. Accordingly, we would ask that you reconsider the actual placement of the security fencing adjacent to the Faculty of Law building to allow a place for protestors at that location.

The result of Ms. Courtenay's letter was a meeting on November 3 attended by police representatives, Mr. Vanderloo and Ms. Courtney. At the meeting they agreed that the area in front of the law school suggested by Ms. Courtney should be the location for the protesters to gather. UBC was hesitant to describe the area as the "demonstration area" because of their entirely accurate view that demonstrations could take place anywhere outside the secure zone. Nevertheless, for anyone not living at the Green College residences, this was really the only area where protesters had a chance to see and be seen by the APEC leaders and I therefore refer to the area as the "demonstration area."

It was suggested that the security fence be placed 20 feet out from the law school building and run the 100 foot length of the building. Supt. Thompsett agreed with this. UBC was satisfied with the location but not with the 20 foot distance between the fence and the building. UBC's view was that this would not give protesters enough room to gather. The proposed fence location was also a considerable distance from the junction of Northwest Marine Drive and Chancellor Boulevard at Gate 3, where the leaders' motorcades were expected to enter and exit the campus.

9.5.2.1. The Thompsett/Pavlich line

A meeting was convened in President Piper's office on November 10. Insp. Dingwall attended with Supt. Thompsett. Present with President Piper were Prof. Pavlich and Ms.

Courtney. As a result of UBC's dissatisfaction with the size of the demonstration area, Prof. Pavlich, Ms. Courtney, Supt. Thompsett and Insp. Dingwall walked to the law school site. They agreed to move the line out a further 64 feet to a location 84 feet from the law school building. This became known as the "Thompsett/Pavlich" line.

There was a firm agreement between the RCMP and UBC on the location of that line. Supt. Thompsett thought the agreement was finalized on the spot but I believe the correct sequence was that he left to discuss the matter with other senior police officials and then telephoned Ms. Courtney either later that day or the next day to advise that the Thompsett/Pavlich line was acceptable to the RCMP. Ms. Courtney immediately sent an e-mail to Mr. Brown advising him of the agreement that had been reached.

9.5.2.2. Mr. Carle's view

Mr. Carle toured the UBC site again on November 13, accompanied by Mr. Brown, Ms. Courtney, Mr. Vanderloo, Supt. Thompsett, Supt. May and Insp. Dingwall.

At the law school, Mr. Carle was shown the location of the Thompsett/Pavlich line and was made aware of the agreement between the RCMP and UBC. He objected vigorously. He said his concern was for public safety. He described the location of the line as being on a hill and he was concerned that, if a large number of people were to gather there, the fence might roll over and an accident could result. When questioned about the terrain in front of the law school, Mr. Carle said that it was steeper towards the street. He was completely wrong. The slope levels off towards the street and rises towards the law school building. In any event, he wanted the line moved. None of the others present shared Mr. Carle's concern. They were all comfortable with the Thompsett/Pavlich line. Mr. Carle proposed instead a line 41 feet from the law school building.

There were no security reasons for moving the line to Mr. Carle's proposed location. The three police officers agreed on that point. Supt. May was asked directly for his view:

Q:	What Mr. Carle was doing was unilaterally moving the line closer to the law school, right?
A:	Yes, sir.
Q:	And from your point of view, that had nothing to do with security concerns?
A:	No, sir.
Q:	You're agreeing with me?
A:	I'm agreeing that my line in the sand was in the vicinity of Line 2 to 6.

Line 2 was the Thompsett/Pavlich line, 84 feet from the building; line 6 was 75 feet from the building and the location where the fence was actually located on November 25.

Mr. Carle was definite that he did no more than express his concern and opinion and that he was not directing the police, which he acknowledged he had no authority to do. Mr. Vanderloo said that Mr. Carle wanted the line moved back and that he was quite emphatic in expressing himself. Mr. Vanderloo saw Mr. Carle as making a strong recommendation that the line be moved. He said he left the site with the impression that the line would be moved to where Mr. Carle wanted it to be. Mr. Vanderloo was asked if he accepted that Mr. Carle's concern was for the well being of the students who would be standing on a slope. He answered:

> You have to understand the circumstances, too. We were in the midst of a meeting. I wasn't prepared to argue at that particular stage. There were--let's just go ahead with it. Whether that's the right or wrong decision, I accepted it; and if I have to take the blame for that.

It was Mr. Brown who went toe to toe with Mr. Carle on the issue. Mr. Vanderloo said that Mr. Carle was yelling at Mr. Brown. Mr. Brown agreed that "authoritarian" was an accurate description of Mr. Carle's demeanour as he tried to reason with him. On three occasions, Mr. Vanderloo referred to Mr. Brown's efforts as trying to convince Mr. Carle to "reverse his decision."

Mr. Pelletier testified as to his briefing by Mr. Carle about the site visit:

> He told me that he had taken a decision and that was not the decision that was agreeable to the University.

Asked to describe the scene, Supt. Thompsett said that when Mr. Carle's attention was drawn to the Thompsett/Pavlich line:

> . . . . He looked at the--he looked out at the line, he looked back a bit to his left, he looked back out at the line again, he looked back to his left and extended his hand and said here, here. In other words, I took it, that he was indicating he wanted the line where his hand was pointing. With that, Mr. Brown stepped forward, Chris Brown stepped forward and said to him that--tried to explain to him that the University had this interest in commitment to provide a protest area. Mr. Carle said, here, right here. That was the end of the discussion.

Supt. Thompsett, who was to be in command on campus on November 25 and had been a party to the accord with UBC on the location of the fence, was asked why he had not spoken up:

> Well I've learned over the years that when you have to deal with someone where there's a controversy, its important that you pick your time and your place, and my assessment of Mr. Carle, I had never met him before, but the way he responded to Mr. Brown, that was not the time to get into a discussion with Mr. Carle about something that he may have a different opinion on.

When he was asked about his understanding, at the conclusion of the site tour, as to where the line would be drawn, Supt. Thompsett said:

> A: Well, I knew of the agreement that I had with Prof. Pavlich, and it was my intention to honour that agreement. I--now I had a little bit of a problem, because the PMO's office had a position namely Mr. Carle, and the University and I agreed with the University position. So I--at that particular moment, I wasn't quite certain how I was going to resolve this, at that particular time.
>
> Q: Did you attend a meeting with President Piper and Mr. Carle and others on the 22nd of November?
>
> A: Yes.
>
> Q: Was that the next thing that happened?
>
> A: Well, no. As I was contemplating my strategy and how I was going to do deal with this, I had heard from either Wayne May or Bill Dingwall that Mr. Brown had reported back to President Piper of the meeting on the lawn, and then I had heard that President Piper was going to express her displeasure to the Prime Minister.

I accept that as an honest and reasonable answer. I believe that Supt. Thompsett did intend, in his own way and in his own time, to address the situation. Given the environment he was in at the time, his decision was very likely a wise one. Mr. Carle had, in my judgment, inexcusably thrown his weight around on this occasion. His expression of concern for public safety was a spurious one that I reject.

9.5.2.3. UBC's reaction

Mr. Brown reported Mr. Carle's intervention to Prof. Pavlich. Prof. Pavlich testified as to his reaction:

> So I said to him, I said, I think we should indicate that this was a breach of an agreement. I thought it was a breach of two agreements. An agreement that we have reached with the--with the RCMP, and I said, in my view, it was also an agreement--a breach of the agreement with the Federal Government. Because the only conclusion--the only inference I could draw from all of this, given the conversation I had had with Thompsett, who, after all, is the security person, right, he's the RCMP, and given the fact that he was happy with the way the line had been drawn--and I assumed he was acting pretty conservatively, I got to tell you, I could only assume from all of this that the whole question of allowing people to protest peacefully was an issue. I said, it's hard for me to--to conclude anything else, because what you're telling me is that this is, you know, a function of the Prime Minister's Office, what the hell does he know about security? He sure as hell doesn't know any more than I do. And the expert is--who is the RCMP has settled it in a certain spot. So I was really quite angry, I'll tell you. And I said, we had to take this to the president.
>
> President Piper shared Prof. Pavlich's concern and dissatisfaction. President Piper, Prof. Pavlich, and Mr. Brown drafted a letter dated November 19, 1997 to Prime Minister Chrétien and dispatched it by fax. The letter reads:

Dear Prime Minister:

> I am writing to you to express our concern about a proposal to seriously limit the opportunity for members of the University community, particularly students, to have a sense of involvement in the upcoming APEC Economic Leaders' Meeting on the campus of The University of British Columbia.
>
> In planning the leaders' meeting, we had reached an agreement with the RCMP on a "line of sight" gathering place where interested students, including some who are opposed to APEC, could see and be seen, however briefly, by the APEC leaders.
>
> Now, regrettably, as we enter the final planning stages for the leaders' meeting, officials from your office have decided to reduce significantly the area available for line of sight access to the APEC leaders. This contravenes the University's commitment to its community, violates a prior agreement, and increases the risk of a serious incident arising out of over-crowding and frustration in a very confined space.
>
> A return to the boundaries previously agreed upon by the University and the RCMP would in no way endanger the safety of the APEC leaders, and would enable the University to meet its minimum obligations with respect to providing access and freedom of speech.

> Over the past months we have been very active in supporting your farsighted decision to host the APEC Economic Leaders' Meeting on the campus of this University. We share your view that it is essential to demonstrate to the APEC leaders themselves and the international community the importance of youth and education in the Asia Pacific region. To be consistent with this approach, it is vitally important that together we actively encourage the free expression of opinion by members of the University.
>
> It is in this spirit, therefore, that I write now to ask that your staff review their decision to further restrict the area available to students who wish to engage with the leaders' meeting. I hope that it will be possible to return to the boundaries already approved by the RCMP and preserve the agreement that regulates our respective interests in this matter.
>
> Yours sincerely,
>
> "Martha Piper"

9.5.2.4. Mr. Carle's response to UBC

Without bringing President Piper's letter to the Prime Minister's attention, Mr. Carle replied to it in his own name. He said that replying to the letter fell within his decision making responsibilities.

Mr. Carle said that Mr. Vanderloo had delivered President Piper's letter to him and that Mr. Vanderloo "took it upon himself to go and draft a response letter" that Mr. Carle would sign on Prime Minister's Office letterhead. Mr. Vanderloo did not recall giving the letter to Mr. Carle. Rather, he assumed that it had gone directly to the Prime Minister's Office. He was definite that Mr. Carle had asked him to draft a response. I am satisfied that Mr. Carle initiated Mr. Vanderloo's involvement and that Mr. Vanderloo did not "take it upon himself" to draft the letter.

Mr. Carle said that he spoke to Supt. May on the phone, telling him that he would be "talked to" by Mr. Vanderloo. Supt. May acknowledged that he was given an opportunity to provide input into the draft reply. Initially he testified that he made no comments to Mr. Vanderloo on the substance of the reply and did not recall providing any special input but later he said he may have made some comments on Mr. Vanderloo's draft.

I am satisfied that Supt. May did contribute to the content of the letter. I accept Mr. Vanderloo's evidence that he and Supt. May sat down in the ACCO office to draft the response. Mr. Vanderloo said that the letter signed and sent by Mr. Carle accorded with the draft he prepared and delivered to Mr. Carle for transcription onto Prime Minister's Office letterhead.

The letter is dated November 20 and reads:

> Dear Dr. Piper,
>
> Thank you for your letter of November 19 addressed to the Right Honourable Jean Chrétien, Prime Minister of Canada.
>
> In our prior discussions with the University of British Columbia, various options were reviewed with University officials on the issue of "line of sight" gathering places for students. As you will appreciate, security considerations are of paramount concern and restrict the availability of suitable sites. The selection of the preferred site and its desired size were discussed with your representatives, however no agreement was reached as this would eventually be subject to a final threat assessment and analysis. The final decision on the part of the APEC organizers led to the endorsement of the present site by my office.
>
> In addition, the decision was also taken to provide liberal access to the Canadian and international media to the proposed anti-APEC tent city which is located in close proximity to the Media Holding Centre at the University of British Columbia.
>
> Yours sincerely,
>
> The Director of Operations,
>
> "Jean Carle"

Mr. Vanderloo, Supt. May and Mr. Carle were all questioned about the reference to "security considerations" being of "paramount concern." Mr. Vanderloo acknowledged that the letter did not refer to Mr. Carle's alleged "safety" concerns about the slope of the terrain because he did not consider Mr. Carle's concern to be particularly valid. When asked why he had referred in the letter to security considerations being of paramount concern, Mr. Vanderloo replied:

> A: My recollection of the drafting of this response relates to, I think, Dr. Piper's statement that we were violating the agreement.

Q: Right. And--and--and the agreement was that you could only interfere with student's rights to lawful protest if there were security considerations; right? That's what--that's what President Piper was communicating to you.

A: Hmm hmm.

Q: --and that's what you were responding to; right?

A: Yes.

Q: And so you were coming back to her and suggesting that the reason why, me--Mr. Carle, have put the line where I want to put the line is because of security concerns--

A: Hmm hmm.

Q: --that was the purpose of the letter; right?

A: Yes.

Q: And that was misleading; right?

A: I admit that, yes.

Mr. Carle acknowledged that the statement in the letter that "security considerations are of paramount concern and restrict the availability of suitable sites" had absolutely nothing to do with the slope of the terrain in front of the law school. As I have recorded earlier, Supt. May acknowledged that Mr. Carle's designation of the 41-foot mark had nothing to do with security concerns insofar as the RCMP were concerned.

Supt. May, Mr. Vanderloo and Mr. Carle were also questioned about the assertion in the letter that "no agreement was reached" on suitable protest areas. An agreement had in fact been reached between Supt. Thompsett and Prof. Pavlich on November 10-11, as contemplated by the Licence Agreement. The suggestion that no agreement was reached because changes might be brought about by a "final threat assessment and analysis" was, to put it mildly, disingenuous, particularly on the part of Supt. May who, along with Mr. Vanderloo and Mr. Carle, was well aware of the agreed upon Thompsett/Pavlich line. Everyone involved knew that commitments such as fence location would be subject to adjustment, should an emergency present itself. Supt. May acknowledged that the reference in the letter to the "final threat assessment and analysis" would have come from him.

Mr. Vanderloo was asked what he understood the phrase "no agreement was reached" to mean:

> I think what you have to look at in this letter is that we were searching for--we had to do a response. We were searching for diplomatic language to--to get a response. I think in retrospect, the letter could have been better worded, and we should have been more open in terms of Jean Carle's own concerns and had--have reflected that in the letter--the letter, as it was prepared. And I agree with Wayne's statement that, in terms of any decision on any side will be in the end dictated by the final threat assessment. All of the lines could have been moved hundreds of metres had there been any change in the threat assessment. In re-reading this letter, I think it's--it could have been better worded and we should have been more explicit in reflecting Jean Carle's views.

In my view, the reference to security concerns and the suggestion that no agreement had been reached were dishonest. Mr. Vanderloo, a very decent man with a distinguished background of government service, was singled out to perform Mr. Carle's unpleasant work for him and obviously succumbed to the power wielded by Mr. Carle.

I also believe that Supt. May should have declined to become involved in the drafting of the letter when his participation was requested. Police had no responsibility for helping Mr. Carle prepare his response to President Piper.

Lastly, Mr. Carle's placement of his signature on the letter was unworthy of him and surely was a betrayal of the confidence placed in him when he was entrusted with a level of authority that allowed him to respond, without consultation, to President Piper's letter addressed to Prime Minister Chrétien.

9.5.2.5. A compromise

Soon after she received Mr. Carle's letter, President Piper met with her senior staff and decided to make a further attempt to contact the Prime Minister's Office directly. She telephoned Eddie Goldenberg, whom she knew to be a senior advisor to the Prime Minister, and who had arrived in Vancouver with the Prime Minister for the APEC conference. President Piper expressed her concerns about Mr. Carle's unsatisfactory response to her letter of November 19. Mr. Goldenberg subsequently arranged for Mr.

Pelletier, Chief of Staff in the Prime Minister's Office, to meet with President Piper at her home on campus the following morning, November 22.

Mr. Pelletier arrived on campus with Mr. Carle, Supt. May and Supt. Thompsett. Before going to the President's home, they went to the law school site. Mr. Carle explained to Mr. Pelletier his "safety" concerns and pointed out the location where he had decided the fence should be located. Supt. Thompsett pointed out the location of the Thompsett/Pavlich line. Mr. Pelletier said he was not as worried as Mr. Carle about possible injuries because he did not think that the hill was that big. Mr. Pelletier proposed a compromise location, close to the mid-point between the Thompsett/Pavlich line and that selected by Mr. Carle. All present said they could accept that location. When measured later, Mr. Pelletier's compromise line turned out to be 59 feet from the law school building.

From there, the group went to the President's home, where Mr. Brown was also present. Although the Pelletier compromise was discussed and accepted, neither Mr. Brown nor Supt. Thompsett were overjoyed by the relocation of the previously agreed upon Thompsett/Pavlich line. Each man, independently of the other, went out to where the contractor was erecting the fence at the law school site on Saturday afternoon. Supt. Thompsett drove a stake into the ground at a location closer to the road and said to the contractor "the fence goes right here where the stake is." Mr. Brown, separately, also instructed the contractor to move the fence closer to the road, as he felt that the agreement of the morning was not being honoured. Ultimately, the final line was located 75 feet from the law school building and nine feet back from the Thompsett/Pavlich line. Cross braces were then erected from the fence and at right angles to it for a distance of 10 feet towards the road and then a second row of fencing was erected parallel to the first row. The demonstrators were to be located behind the inner fence. Therefore, in order to see the motorcade route, they had to look through two fences placed 10 feet apart.

There is no doubt that the area set aside for the leaders' meeting on November 25 ended up looking much like a fortress. In reality, there was no real opportunity for the protesters to engage in meaningful protest at the Law School site. Prof. Pavlich obviously had high hopes that the law school area would provide that opportunity but I believe he was quite correct in his assessment, after the fact, when he said:

> There were some people protesting, but I sure as hell don't think anybody on that cavalcade would have been able to see it.

Complainant and witness Donald M. Bain, who was at the law school location for part of the morning of November 25, was asked whether signs in the area in front of the law school would have been visible to the passing motorcades:

> A: I doubt that they would have been able to see it at all. I mean the thing to note about the angle there is, I mean, you basically have to crane your neck to the left and look behind you, if–
>
> Q: If you're travelling--
>
> A: I mean if you were trying to look where the protestors were, you'd have to look to your side and slightly back.
>
> MR. COMMISSIONER: If you came from where?
>
> THE WITNESS: If you came where they came from, which was up Marine Drive, basically came around the corner there. And the angle is such--I mean, there's the slight slope of the hill and the Law School is at the top. And you'd have to--kind of, look up and back.

The witness was quite correct. Motor vehicle passengers, particularly in the back seat, would have had to "crane" their necks sharply in order to see anything at the law school location.

The double fence also contributed substantially to rendering the space in front of the law school ineffective as an area for meaningful protest.

Believing, as I do, that Mr. Carle's performance at the site on November 13 was nothing but a ruse, as Supt. Thompsett and Mr. Brown must also have thought, I commend them for their actions regarding the placement of the fence. Those actions were certainly in accord with and motivated, I believe, by UBC's commitment to allow the protesters an area where they could see and be seen by the passing motorcades. They were also in accord with the Licence Agreement, which provided that the security perimeter was to be the product of consultation between UBC and the RCMP.

The issue for my consideration is whether, in establishing the "demonstration area" where they did, the RCMP's actions were inappropriate or inconsistent with respect for the *Charter* rights of protesters and, if so, whether their actions were at the direction of the federal government, to accommodate governmental concerns unrelated to security. I will record my conclusions in respect of this issue in Chapter 13.

9.5.3. Noise Free Zone

On his November 13 campus visit Mr. Carle expressed concerns that noise from protesters could distract or disturb the leaders and disrupt their meeting. Mr. Carle said he was concerned that protesters would be using bullhorns and the noise might penetrate the museum walls. Supt. Thompsett said he understood Mr. Carle to be concerned that noise would be heard outside the museum as the leaders were arriving and being greeted outdoors by Prime Minister Chrétien.

Mr. Brown said that noise was not a security issue and was not a concern to UBC. Insp. Dingwall said that noise was not a security issue for the RCMP and that if it was an issue, it would be ACCO's issue.

Insp. Dingwall said that Mr. Carle proposed to the November 13 site tour group that the security fence be moved back on West Mall one block to the far end of the roadway at the south end of the C.K. Choi Building. Insp. Dingwall said he told the group that the fence line would not be moved. Instead, he proposed establishing a "noise-free zone" by putting up smaller barricades on West Mall, one block from the intersection with Crescent Road. Officers would be stationed there to watch for amplifying devices such as megaphones and to allow those carrying such things to pass through only if they left their devices at the barricade location.

By accepting Insp. Dingwall's solution, UBC clearly acquiesced in the creation of a "noise free zone" on UBC property. Mr. Brown testified that ". . . we basically came to agreement on an area where observers would be allowed but that megaphones would be restricted." In an e-mail to Dr. Piper, Mr. Brown said:

> The other change the PMO insisted on was a quiet area on West Mall between the C. K. Choi Building and the new School of Journalism. Here they want to create an enclosed area where they will allow students but restrict access to anyone with an electric "Bull Horn" who could cause enough noise to disrupt the leaders' meeting in the MOA. . . .
>
> We all agreed that we could live with the restricted noise zone outside the Choi Building.

Supt. Thompsett said he believed the zone was put in place but he could not be certain because he was not at that location during the critical time on November 25. Mr. Brown said that the agreement was implemented. However, given the way that the events of the day unfolded, I am not surprised that there was no evidence of any amplifying devices actually being surrendered at that location.

The issue for my consideration is whether, in establishing the "noise free zone", the RCMP acted inappropriately or in a manner inconsistent with respect for the *Charter* rights of protesters, and if so, whether they did so at the direction of the federal government, to accommodate governmental concerns unrelated to security. I will return to this matter in Chapter 13.

9.5.4. Mr. Carle's Motivation

I do not believe that Mr. Carle's purpose in acting as he did in respect of the security perimeter or event perimeter, the demonstration area and the noise-free zone was to shield President Suharto from the sights and sounds of peaceful protest in order to live up to assurances allegedly given by the Canadian government to ensure his presence at the APEC conference.

I reject the suggestion that the government improperly interfered with the RCMP by directing, ordering, influencing or pressuring the RCMP for that purpose.

I do believe, however, that Mr. Carle's actions were motivated by a drive to shield the 18 leaders from the sights and sounds of peaceful protest so that Canada could produce the "retreat-like" atmosphere for the leaders' meeting which had become traditional for the last day of the annual APEC conference. The evidence I have reviewed supports that view and leads, in my opinion, to no other rational conclusion.

9.6. Documents Relied on by the Complainants

Complainants' counsel submitted that documentary evidence supports three propositions:

- that Canada took the need to avoid "embarrassment" to the Indonesians to mean that there should be no "signs of protest" in President Suharto's presence;
- that Canada therefore made a commitment to receive and keep President Suharto in a protest-free environment; and
- that the RCMP conduct on campus on November 25 was attributable to the government's efforts to honour that commitment.

I do not agree. Neither the documentary nor oral evidence supports those propositions.

Complainants' counsel suggested that documentary evidence reveals that "Canadian officials lavished the Indonesian dictator with attention and went to extraordinary lengths to assuage his and his officials' concerns about the possibility of him being embarrassed by seeing demonstrators." Again, I do not accept that suggestion.

I referred earlier to some of these documents in my discussion of the Canadian government's efforts to encourage President Suharto's attendance. A few of the other documents warrant consideration here. Chief among them are:

- an e-mail sent the first week of September by Cpl. Merkel to Supt. May and Insp. Dingwall; and
- minutes of a September 17 Security Steering Committee meeting attended by Supt. May, Insp. Dingwall, Cpl. Koleyak and others.

In his e-mail, Cpl. Merkel said that the Prime Minister's Office had "made it clear to ACCO to do anything to ensure the President of Indonesia attends APEC."

Cpl. Merkel had no recollection of the source of this information: he had no direct contact at any time with anyone from the Prime Minister's Office, but he had received Insp. Dingwall's August 27 e-mail, which stated that "Jean Carle does not want the demonstrators close at all."

In the Security Steering Committee minutes of September 17 under the heading "Indonesia," the following appears:

> There has been considerable pressure by the Indonesian government to withdraw from the Conference because of security concerns. The ambassador and a delegation from Washington have been briefed on several occasions regarding security and demonstration issues and each time they appear satisfied with arrangements that have been made. The PMO office has asked that everything that can be done, be done to satisfy the Indonesian concerns.

This too was not long after Mr. Carle's August 27 visit and Mr. Vanderloo said he was pretty sure there must have been a discussion about President Suharto during that visit, at which Insp. Dingwall and Supt. May were also present. Other than Mr. Carle's participation in that August 27 visit, there is no evidence of any other involvement in APEC security planning by the Prime Minister's Office before the September 17 Security Steering Committee meeting.

Complainants' counsel understandably relied heavily on these two documents to support their allegation that the government's desire to ensure President Suharto's attendance motivated the RCMP conduct in issue. I have no doubt that the Prime Minister's Office wished to observe tradition and create a "retreat-like" setting. However, I cannot conclude that these and other documents prove that the Prime Minister's Office went to extraordinary lengths to assuage Indonesian concerns that President Suharto be shielded from all signs of protest at the APEC conference.

I have studied many other documents that counsel rely on to build their case. Several of these documents do refer to concerns about possible embarrassment of President Suharto and the need to protect his dignity or comfort. For example:

- A September 12 e-mail from Mr. Vanderloo to Ms. McNeil and others:

  > PMO had expressed concerns about the security perimeter at UBC, not so much from a security point of view but to avoid embarrassments to APEC Leaders. ACCO and the RCMP are looking at that issue. The response (as suggested in fact by Donolo) is that we have to find a balance that meets both concerns (we do not wish student demonstrations and efforts by the govt to suppress the freedom of expression to become a major media story).

- Advice from Supt. May to the RCMP's Director of Protective Operations and Assistant Commissioner during September or October:

  > Over the past month, a tremendous amount of time and energy has been spent by ACCO and ourselves in dealing with the Indonesian concerns over demonstrators and the possibility that their leader could be subjected to an embarrassing situation.

- A September 16 memorandum from Mr. Bartleman to Mr. Carle, headed "Suharto's possible non-attendance."

  > ... the Indonesians are not bluffing in asserting that Suharto will refuse to go to Vancouver if his dignity is likely to be offended by events taking place on the street.

- "Talking points" prepared on September 19 by Mr. Bartleman for the Prime Minister in preparation for his September 22 meeting with Ambassador Parwoto:

> Canada will be taking particular care to ensure the President's stay is a pleasant and rewarding one. His personal security is assured, and steps will be taken to preserve his comfort.

- A September 19 memorandum co-authored by Ambassador Edwards to Foreign Affairs Minister Axworthy and others, identifying the issue being addressed as:

> To agree to a strategic approach to engage Indonesian Ministers and President Suharto in responding to concerns about potential embarrassment to their Leader at the time of the Vancouver APEC Economic Leaders' Meeting.

- A document accompanying Ambassador Edwards' September 19 memorandum:

> There are two aspects to Indonesian concerns: the physical security of the President (the Indonesians made clear that they wished to avoid a repetition of threatening demonstrations that came physically close to the President when he visited Dresden in 1995); and embarrassment to the President. Indonesia has suggested that the occurrence of either a security problem or embarrassment of the President would damage bilateral relations.

That last-mentioned document also set out a 10-point plan for proposed contact with Indonesia. Of that plan, Complainants' counsel submitted:

> A ten point action plan was adopted by Minister Axworthy to deal with the Indonesian concerns, which included reassuring letters, calls and visits at very senior diplomatic levels, including direct contact between Prime Minister Chrétien and Suharto. The Government of Canada had thus formalized a concrete plan to assuage the Indonesian concerns about embarrassing demonstrations.

These references to the need to avoid embarrassments and to preserve President Suharto's dignity and comfort all accord with what I previously described as the consistent message delivered by Canadian officials to Indonesian officials over the months leading up to the APEC conference: that is, that although the government was willing to make every effort to address Indonesian concerns, Canadian law would always be respected. That law does not permit the banning of peaceful demonstrations and expressions of opinion without proper justification.

Many of the documents referred to by Complainants' counsel do substantiate their submission that the Indonesians were continually insisting that President Suharto should not personally see any demonstrations "for that would be an affront to his dignity, a source of embarrassment."

I reject, however, as unsubstantiated by the evidence, the further submission that:

> The Canadian government reacted to ensure Suharto's attendance and left the RCMP planners with no doubt as to the PMO's wishes. The RCMP planners, May and Dingwall in particular, were thus mired in political issues surrounding Indonesia's attendance and these set the stage for what transpired on November 25th.

One further document requires mention. It is the record of Mr.Vanderloo's phone call to Ms. McNeil, reporting to her on the August 27 tour of the conference sites with Mr. Carle. Ms. McNeil recorded 19 handwritten points on six pages of her notebook. The notes were made either during the telephone call or immediately afterwards. Point 13 reads:

> Suharto - PM does not want him to be embarrassed - **impt**! - push crowds back further - more $ for security - Donolo be careful students not stifled for one leader - big story.

Ms. McNeil's memory of what she was told by Mr. Vanderloo was unclear. She had difficulty explaining what she had recorded. Mr. Vanderloo acknowledged speaking to her about the site tour but his evidence did not support the explanation advanced by Complainants' counsel. Ms. McNeil tried to explain the meaning of her note by referring to Mr. Vanderloo's September 12 e-mail to her, quoted above. That is not an unreasonable explanation given that the September 12 note does refer to "embarrassments" and particularly to Mr. Donolo's participation on the issue of student demonstrations and a media story.

Complainants' counsel suggests that Ms. McNeil's reference to "PM" was a reference to Prime Minister Chrétien and that the note demonstrates that the Prime Minister himself made efforts to protect President Suharto by stamping out protest. I disagree. Given Mr. Vanderloo's reference to the "PMO" in his September 12 e-mail, and the fact that Ms. McNeil's notes were based on a subsequent telephone call from Mr. Vanderloo, the most reasonable conclusion is that it was the Prime Minister's Office (PMO) that had expressed concern about potential "embarrassment." Ms. McNeil's notes also suggest that the Prime Minister's Office wished to ensure that the students were not "stifled for one leader." As noted by Mr. Vanderloo, the goal was to achieve a "balance that meets both concerns."

Finally, it must be borne in mind that Ms. McNeil's notes were entered as an exhibit at the hearing not as proof of the truth of their contents but of the fact that they were made.

I have expressed my conclusions about what occurred during Mr. Carle's August 27 visit and Ms. McNeil's notes do not alter that conclusion. I appreciate the reason for the great emphasis placed on these notes by Complainants' counsel but they do not cause me to reach any different conclusion on the Indonesian matter than that which I record below.

9.7. Conclusion

As I have noted, Complainants' counsel put forward two possible explanations for the events that gave rise to the multitude of complaints that were the subject of the hearing:

> Did these events occur because Canada's revered national police force was ill-prepared, poorly trained, unfamiliar with Canadian law and overzealous?
>
> Or is the explanation more disturbing - that the Canadian government, anxious to make a good impression on at least one dictator who made it clear that his visit and future bilateral relations depended on the suppression of demonstrations, created a climate in which visible displays of dissent would not be tolerated?

Counsel's position is that the occurrences of November 25 and the immediately preceding days are accounted for by the second explanation. Having reviewed in this chapter the evidence that Complainants' counsel says supports that explanation, I do not agree.

Without question, the Canadian government was eager to have leaders of all 18 APEC economies, including President Suharto, attend the APEC conference. To that end, far more time and effort went into encouraging the attendance of President Suharto than was directed to any other leader. That is not objectionable. In my view, the federal government acted appropriately in all of its contacts and approaches to the many Indonesian officials with whom they dealt on this issue. The Canadian government did not signal to the RCMP, either overtly or subtly, that they ought to perform as they did in order to curtail demonstrations and stamp out visible dissent.

10. POLICE INDEPENDENCE

Before turning to each of the 17 categories of complaints, it will be useful to analyse briefly the proper relationship between government and the RCMP, and the concept of "police independence."

The nature and extent of police independence is not clearly defined in Canadian law. Although it is generally agreed that the RCMP does enjoy a measure of independence, there is no consensus, either in academic writing or in judicial decisions, as to what is the proper relationship between the federal government and the RCMP.

The *RCMP Act* suggests that the force is not entirely independent of the government by stipulating that the Commissioner of the RCMP is appointed by Cabinet (Governor in Council) and controls the force under the direction of the Solicitor General:

> **5.** (1) The Governor in Council may appoint an officer, to be known as the Commissioner of the Royal Canadian Mounted Police, who, under the direction of the Minister, has the control and management of the Force and all matters connected therewith.

Despite the apparent over-arching control vested by statute in the Solicitor General, the common law has made it very clear that the RCMP does in fact enjoy a substantial measure of independence.

10.1. The English Approach

In England, in *R. v. Metropolitan Police Commissioner, Ex Parte Blackburn* [1968] 1 All E.R. 763 (C.A.), Lord Denning M.R. expressed a broad notion of police independence:

> The office of Commissioner of Police within the metropolis dates back to 1829 when Sir Robert Peel introduced his disciplined Force. The commissioner was a justice of the peace specially appointed to administer the police force in the metropolis. His constitutional status has never been defined either by statute or by the courts. . . . *I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive.* He is not subject to the orders of the Secretary of State, save that under the *Police Act 1964* the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected;

> and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not prosecute this man or that one. Nor can any police authority tell him so. *The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.* (emphasis mine)

10.2. The Canadian Approach

The Supreme Court of Canada has recently confirmed that the RCMP are their own masters in the realm of law enforcement: *R. v. Campbell*, [1999] 1 S.C.R. 565. In that case, the court cited with approval the passage quoted above from *Blackburn*. Speaking for a unanimous court, Binnie J. said that a police officer engaged in a criminal investigation is not acting as a government agent. However, police perform many other functions apart from the investigation of crimes, including ceremonial duties and protection of visiting foreign dignitaries. Some of these functions bring the RCMP into a closer relationship to the Crown than others, the court said. The court referred to section 5 of the *RCMP Act*, which provides for the governance of the RCMP and said:

> While for certain purposes the Commissioner of the RCMP reports to the Solicitor General, the Commissioner is not to be considered a servant or agent of the government while engaged in a criminal investigation. The Commissioner is not subject to political direction. Like every other police officer similarly engaged, he is answerable to the law and, no doubt, to his conscience.

In respect of criminal investigations and law enforcement generally, the *Campbell* decision makes it clear that, despite section 5 of the *RCMP Act*, the RCMP are fully independent of the executive. The extent to which police independence extends to other situations remains uncertain.

10.3. Independence vs. Accountability

In my view, there are compelling public policy reasons not to extend the concept of police independence beyond that set out in *Campbell*. The issue is one of balance. It is clearly unacceptable for the federal government to have the authority to direct the RCMP's law enforcement activities, telling it who to investigate, arrest and prosecute, whether for partisan or other purposes. At the same time, it is equally unacceptable for the RCMP to be completely independent and unaccountable, to become a law unto themselves.

This is precisely the position taken by the McDonald Commission in its report on the activities of the RCMP vis-à-vis the Quebec separatist movement in the 1970s: *Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police* (Ottawa: Canadian Government Publishing Centre, 1981).

Indeed, the following extracts from the McDonald Commission's report strongly support the proposition that the only limit on executive interaction with the police is in the context of law enforcement - criminal investigation, arrest and prosecution:

> We take it to be axiomatic that in a democratic state the police must never be allowed to become a law unto themselves. Just as our form of Constitution dictates that the armed forces must be subject to civilian control, so too must police forces operate in obedience to governments responsible to legislative bodies composed of elected representatives. *This important doctrine in our system of democratic government has often been overshadowed by the parallel concept that the best interests of the state are served by keeping at bay any attempts to interfere with the making of police decisions relating to investigation and prosecution in individual cases.*
>
> The concept of independence for peace officers in executing their duties has been elevated to a position of paramountcy in defining the role and functions of the RCMP, thus setting the norm for all relationships between the government and the Force. *We believe, on the contrary, that the peace officer duties of the R.C.M.P. should qualify, but not dictate, the essential nature of those relationships. The government must fulfill its democratic mandate by ensuring that in the final analysis it is the government that is in control of the police, and accountable for it.* There is no inconsistency in asserting simultaneously that every member of the government, and above all the Minister responsible for the RCMP, has an essential obligation not normally to become involved in the decisions to be made by members of the Force, including the Commissioner himself, with respect to investigation, arrest and prosecution in individual cases.
>
> . . . .
>
> In the areas of both security and law enforcement we strongly support the principle that considerations of a purely partisan or personal nature should play no part in the making of decisions at any level.
>
> . . . .

In support of the claim by members of the RCMP to occupy a special status of independence in the discharge of their peace officer's duties, reference is frequently made to decisions of the English courts and to the Report of the British Royal Commission on the Police in 1962 which examined the relationship of police personnel in that country both with the central authority, in the person of the Home Secretary, and with the local police authorities. In its Report, that Royal Commission reaffirmed the special constitutional status of the police in Britain, on the grounds that in such "quasi-judicial" matters as inquiries with regard to suspected offences, the arrest of persons, and the decision to prosecute,

. . . it is clearly in the public interest that a police officer should be answerable only to his superiors in the force and, to the extent that a matter may come before them, to the courts. His impartiality would be jeopardized and public confidence in it shaken, if in this field he were to be made the servant to too local a body.

The Royal Commission, however, experienced more difficulty in defining the status of the chief constable and his relations with the local or regional police authority. When dealing specifically with the "quasi-judicial" matters referred to above, the Royal Commission accepted the proposition that it is in the public interest that a chief constable "should be free from the conventional processes of democratic control and influence". The problem areas, the Commission deduced, were those which fell outside the enforcement of the law in particular cases and included such matters as the police chief's general policies in regard to law enforcement over the area covered by his force, the disposition of the force, the concentration of police resources on any particular type of crime or area, *the manner in which he handles political demonstrations or processions and allocates and instructs his men when preventing breaches of the peace arising from industrial disputes, the methods he employs in dealing with an outbreak of violence or of passive resistance to authority*, his policy in enforcing traffic laws and in dealing with parked vehicles and so on.

It is important to note with respect to these questions, that the British Commissioners rejected the prevailing doctrine by which, as a consequence of his legal status, the chief constable is invested with an unfettered discretion, and accountable to no one and subject to no one's orders as to the manner in which he exercises that discretion.

. . . .

This fundamental distinction between the "quasi-judicial" and other functions of a police force is, we believe, pertinent to the Canadian situation.

. . . .

We believe that those functions of the RCMP which we have described as "quasi judicial" should not be subject to the direction of the Minister. To be more explicit, in any particular case, the Minister should have no right of direction with respect to the exercise by the RCMP of the powers of investigation, arrest and prosecution. To that extent, *and to that extent only*, should the English doctrine in *Ex parte Blackburn* be made applicable to the RCMP Even though the Minister should have no power of direction in particular cases in relation to the exercise by the RCMP of these "quasi-judicial" functions, the Minister should have the right to be, and should insist on being, informed of any operational matter, even one involving an individual case, if it raises an important question of public policy. In such cases he may give guidance to

> the Commissioner and express to the Commissioner the government's view of the matter, but he should have no power to give *direction* to the Commissioner. (emphasis mine)

10.4. Some Principles

I have carefully considered certain propositions set out in the reply submissions of Commission Counsel after their review of the McDonald Report and the decision in *Campbell.* With that assistance, I have formulated the following principles which I believe describe the current relationship between the federal government and the RCMP:

- When the RCMP are performing law enforcement functions (investigation, arrest and prosecution) they are entirely independent of the federal government and answerable only to the law.
- When the RCMP are performing their other functions, they are not entirely independent but are accountable to the federal government through the Solicitor General of Canada or such other branch of government as Parliament may authorize.
- In all situations, the RCMP are accountable to the law and the courts. Even when performing functions that are subject to government direction, officers are required by the *RCMP Act* to respect and uphold the law at all times.
- The RCMP are solely responsible for weighing security requirements against the *Charter* rights of citizens. Their conduct will violate the *Charter* if they give inadequate weight to *Charter* rights. The fact that they may have been following the directions of political masters will be no defence if they fail to do that.
- An RCMP member acts inappropriately if he or she submits to government direction that is contrary to law. Not even the Solicitor General may direct the RCMP to unjustifiably infringe *Charter* rights, as such directions would be unlawful.

11. EARLY TAKEOVER OF THE MUSEUM

11.1. Tents at the Museum

During the week leading up to the APEC leaders' meeting, a tent city had been set up on campus as a central gathering place for those associated with APEC Alert and others planning to participate in the protest on Tuesday, November 25.

On Wednesday, November 19, a small group of protesters left the main tent city and pitched their tents on a small hill behind the Museum of Anthropology. There were two or three tents and eight or 10 occupants. Early in their stay, the protesters had written on the back windows of the museum with washable paint and had rearranged some of the stone work on the ground. UBC, the property owner, did not choose to evict the protesters.

On November 20, Mr. Carle telephoned Mr. Vanderloo and asked what ACCO was going to do about the situation. Mr. Vanderloo agreed that something should be done. He said that he had made inquiries in Ottawa and had been told that the RCMP had no legal right to take over the property at that time. He also had inquired as to whether the provincial government might help with obtaining early possession of the property, but had been unsuccessful. Mr. Carle was emphatic that the protesters had to be moved from the museum site earlier than had been planned. In his evidence he gave these reasons:

> Our main concern over the tent city at the museum was that we were very close from the retreat time, and we wanted to avoid any kind of vandalism or incident that could take place and disturb the planned schedule of events.

On or before the morning of November 21, Mr. Vanderloo spoke with Supt. May and asked if there was anything that could be done to remove the protesters. Supt. May said that the RCMP would "monitor" the situation but had no legal authority to remove anybody from the museum at that time. Supt. May did make a commitment to Mr. Vanderloo that if UBC, as property owner, asked the RCMP to remove the tenters, the

RCMP would honour that request and "move in and remove the protestors under trespass regulations."

The morning of November 21, Mr. Vanderloo decided to approach Mr. Brown. Mr. Vanderloo acknowledged he was emphatic in his presentation to Mr. Brown and that he put on quite a bit of pressure. Mr. Brown said that Mr. Vanderloo made it clear that the federal government was anxious to secure the museum because it was the primary venue for the leaders' meeting and that the government was conscious of the fact that it was an important site to UBC because it housed a valuable collection of artifacts.

When Mr. Brown did not agree to his request, Mr. Vanderloo telephoned President Piper and asked that the government be permitted to take possession of the museum site later that day or early the next morning, Saturday, November 22. President Piper agreed to consider the request. Mr. Vanderloo testified that he was motivated to make the request by two factors: the impact the situation could have on the leaders' meeting scheduled for the following Tuesday; and the implications that might flow from any further damage at the site.

Throughout this period, Mr. Vanderloo kept in touch with Mr. Carle and advised him of his progress.

11.2. A Legal Opinion

Supts. May and Thompsett were aware of the requests by ACCO and Mr. Carle and each of them consulted about what could be done. Both knew that they could not remove the tenters without legal authority. Supt. May determined that the RCMP should obtain a legal opinion. He explained:

> Well, our strategy was, you know, we weren't going to do anything we didn't have the legal authority to do. That's why I was after that legal opinion to see what strategies and options we could develop.

On the evening of November 20 the RCMP sought a legal opinion from a federal Department of Justice lawyer who was not a witness at the hearing.

At 9:38 a.m. on November 21, the lawyer telephoned Supt. Green with his comments on the Licence Agreement and to discuss the RCMP's legal authority to comply with the requests by ACCO and Mr. Carle to clear the tenters from the museum grounds. Saying that he had discussed the matter with his Department of Justice colleagues and a "senior litigator from Vancouver," the lawyer suggested several amendments to the Licence Agreement. His suggestions included the insertion of an earlier takeover date and certain revisions to the schedules to clarify the secure area covered by the licence. During the conversation, he told Supt. Green and VPD Deputy Chief McGuinness, who had joined the conversation, that once the licence agreement became effective, the RCMP would be authorized to remove the tenters by virtue of their powers under the *Criminal Code* to remove trespassers. He told the officers:

> And, number three, you have your powers under the *Criminal Code* once you tell the people to leave, because the minister has been licenced this whole area, and the RCMP and Vancouver Police and everybody else who is involved in this are responsible for the security, therefore, if they won't leave, you have powers under the *Criminal Code* to move them. Because they're, they're trespassers.

The relevant sections of the *Criminal Code* are:

> 41(1) Every one who is in peaceable possession of a dwelling-house or real property, and every one lawfully assisting him or acting under his authority, is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove a trespasser therefrom, if he uses no more force than is necessary.
>
> 42(1) Every one is justified in peaceably entering a dwelling-house or real property by day to take possession of it if he, or a person under whose authority he acts, is lawfully entitled to possession of it.
>
> 430(1) Every one commits mischief who wilfully
>
> (a) destroy or damages property;
>
> (b) renders property dangerous, useless, inoperative or ineffective;
>
> (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or

(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

At 10:17 a.m. on November 21, Supt. May telephoned Supt. Green, who told him of the lawyer's advice.

11.3. The Agreement to Move the Tenters

Supt. May testified that there were no security reasons for the early takeover on either November 21 or 22. He did agree, however, that once the federal government gained control of the site, the RCMP, at the government's request, would remove, and would be entitled to remove, the protesters.

On a number of occasions Supt. May said the RCMP had made an implicit "commitment" to the federal government that they would remove the protesters upon request. He said that, as the RCMP liaison with ACCO, he had delivered that message to ACCO.

Supt. May acknowledged that he was not in a command position at the time and that it was Supt. Thompsett who held that responsibility. He also acknowledged that he and Supt. Thompsett had very different views as to whether the students should be removed if an early takeover was negotiated with UBC. When Command Centre telephoned Supt. Thompsett on November 21 to tell him that the protesters were to be out by 2:00 p.m. that day, Supt. Thompsett responded that there was no authority to move them out. Supt. Thompsett did not have a concern from a security perspective about the tenters remaining.

By late afternoon, ACCO and UBC agreed that the museum would be turned over to the federal government at 6:00 p.m. on November 22 but if, in the meantime, there was a marked increase in student activities behind the museum, UBC would take the initiative of calling in the RCMP. A formal amendment to the Licence Agreement was to be prepared.

Mr. Vanderloo was asked about his understanding of Mr. Carle's involvement in the arrangement:

A: We had to go back to Jean Carle with the solution, and I met with him and--and he agreed to it, which I think is also reflected in this document, later on.

Q: Well if he hadn't agreed to it, what would you have done?

A: I don't know.

Q: I realize that's speculation but--

A: That's speculation, yeah--

Q: --but--but I want--I guess what I'm trying to get at is--is did you have to have Jean Carle's approval?

A: Since the request initially came from him, I had to--to--to close that particular loop. I would have continued the pressure on my own, because of the damage that was being done, or the potential damage to the property.

At about 9:30 p.m. on November 21, the RCMP learned that the protesters had started a camp fire. The fire department was called to put the fire out and Supt. Thompsett alerted Prof. Pavlich. Prof. Pavlich said that if even one more protester were to show up at the site he would come down to the museum personally, direct the protesters off the property and, if necessary, authorize the RCMP to move them off. That never happened.

Word was sent the next day to Supt. Thompsett that the eviction was to occur soon after the agreed hour of 6:00 p.m., it being anticipated that the amendment to the Licence Agreement would have been prepared and signed by then. Supt. Thompsett felt, quite correctly I believe, that his input should have been sought before the decision was made. He said:

> And when they called and said--when Superintendent Casey called and said that we've made the decision that they're going to be moved tonight, that didn't strike me in the right manner at the moment. That--I felt that perhaps they could have given us a call and we could have discussed it and had some consultations and as much as Alpha Command was the ultimate authority, I still felt that our input should have been sought before this decision was made.

In his evidence, Supt. Thompsett explained his position about the presence of the tenters at the museum site and clearly this is what he would have told Command Centre had his opinion been sought:

Q: As of this time, at--at 15:00 hours or so on the 22nd, what was your view as to whether or not the tenters needed to be moved that day?

A: I -- I didn't feel that it was necessary to move them. And my--my main reason of course, again I–I want to stress that that doesn't mean that there was not always a concern from a security perspective. In terms, that if they were to--to do something, or suddenly do something, or if they were to be joined by others, we were very mindful of that.

> So that was always in my mind, but I was concerned about moving them, excuse me, at that time, from the perspective that we pretty well have a rapport with them, in the terms that there's kind of an understanding that they behave themselves, and for lack of a better expression, we'll--we'll respect that.
>
> From a Site Commander perspective, I didn't want to get them annoyed, perhaps for analogy, but I didn't want to poke a sleeping bear. In other words, things are fine now, we get them agitated and get them upset, we're going to end up with a whole tent city down here and we're going to have to deal with them. Right now, we're just having to deal with 10 or 15 people and things are fairly passive and not a big concern to us.

He explained that the security fence was to remain open at certain places until the night of November 24, so that if the protesters were provoked and decided to bring "all of tent city" to the museum grounds, it would be difficult for police to keep them out. It was Insp. Dingwall who had told Supt. Thompsett of the 6:00 p.m. removal hour and Supt. Thompsett was asked what reason Insp. Dingwall had given for wanting the tenters removed at 6:00 p.m.:

> Well, what they were telling me, in accordance with what's reported in the transcript, is that apparently they had given an undertaking to the Prime Minister's Office that they would be removed and, therefore, they wanted to go good on that undertaking to the Prime Minister's Office.

Supt. Thompsett's view was that although the tenters at the museum might constitute a security risk, trying to move them might cause a worse problem. He said:

> . . . . if we got these people angry and they decided to resist us and get upset and bring all of tent city down, now we've got a bigger problem on our hands to keep these people out.

And further on in his testimony:

A: I want to emphasize again, that I'm saying that being very mindful that in the back --

Q: Yes.

> A: -- of my mind, we could end up with a security problem here. But I could have a worse problem, in other words, I have to weigh the options as to what I got now as to what I might have.
>
> Q: Right. So you were watching the situation --
>
> A: Hmm hmm.
>
> Q: -- and at some point, you were going to have to remove them if they didn't go voluntarily, but you didn't think that was necessarily the time that you had to remove them?
>
> A: Well, I didn't want to remove them, at this time. There were, as I say, the potential security concerns, but I could have a bigger --
>
> Q: Right.
>
> A: -- security concern if I didn't play this the right way.

And, later in his testimony:

> . . . I was concerned that we don't want to get these people angry. Because right now, it would be more difficult for us to control people if we got them angry, the demonstrators, considering the numbers that were back at the tent city and the fact that we did not have our secure fencing up at that point in time.

Supt. Thompsett, who was in command of the site, was clear on three points:

- that on November 21 he had no legal authority to remove the tenters;
- that provoking the protesters might bring greater numbers to the site, increasing security challenges; and
- at a later time, when the security fence was closed off completely and more police resources became available, police would be in a better position to remove the tenters and prevent the entry of others into the area.

Right up to the time that the tenters were removed, Supt. Thompsett continued to be of the view, as was Supt. May, that there were no security reasons requiring their removal. Supt. Thompsett's testimony makes it clear that removing the tenters posed a greater security risk than allowing them to remain. But in spite of that view, Supt. May was the RCMP's principal participant in the formulation of what he described as an implicit commitment to remove the protesters once the government had control of the site. In my view, the evidence indicates that the commitment must have been explicitly agreed to by Supt. May.

At the same time, there is little doubt that the RCMP's position, based on the legal opinion they had received, was that they would be legally entitled to remove the tenters once the government assumed control over the museum pursuant to the Licence Agreement. This was illustrated by a telephone conversation at 4:23 p.m. on November 22 between Supt. Thompsett (TT) and Insp. Dingwall (BD):

> BD: And - Wayne - is the same feeling as me and that is that - we gave the commitment. Once that contract's signed and then ACCO asks us that now that they're the property owners so to speak, once they don't -, ask us to, to remove those people because - they don't want them there. Then we'll go in, and and take them out. But it can be done really - you know passively. In fact they may even get up and go themselves once they know that, you know, we're -
>
> TT: - yeah but -, but uh keep in mind that -, you know I mean we can do it, but I mean like why?
>
> BD: 'cause that's the commitment that was given to the Prime Minister's Office.
>
> . . . .
>
> TT: Okay I'm I'm talking on my cell here but -, what is the -, authority.
>
> BD: Well the authority is, it's just like you as a homeowner -, if somebody squats on your property.
>
> TT: – oh I see, oh I see what you mean.

In his testimony, Supt. Thompsett was asked whether, given this conversation with Insp. Dingwall, he had any concerns about the RCMP's ability to remove the tenters on November 22:

> . . . . I had no difficulty if the property turned over to the Federal Government, and the Federal Government said there's people on our property and we want them removed, there's no doubt in my mind of the provisions that it -- in my opinion, that mischief provisions of the Criminal Code would apply.
> I was trying to discourage Dingwall from taking action. But there was no doubt in my mind that of what -- when the legal authority would click in.

While Supt. Thompsett was quite correct that Command Centre or "Alpha Command," as he called it, was the ultimate authority over him as Site Commander, I am satisfied that what occurred in the course of the decision to remove the tenters was correctly described by Supt. May:

> A: ... implicit in--in the moving the date of the possession of the Museum of Anthropology up to 18:00 hours on the 22nd, was that requests would be made to us to remove the trespassers. And that's the facts of the case, is once that agreement was amended and the Federal Government were the tenants of that property, they made the request to me to have them removed and I passed it onto the Command Centre. The logistics of--of implementing how they were going to be removed, was left with the Command Centre.
>
> Q: Well, let's--let me--let me, end with this, sir. Perhaps the logistic-how it was to be removed is--is left with the Command Centre, but it was your decision, your order to--
>
> A: That was the agreement that was reached, yes, through my liaison with ACCO.
>
> Q: And you gave that order, right?
>
> A: I'm not sure it was a--an order. I didn't say I order you to do this. I said this is implicit in this whole deal, and that's how it's going to be resolved.
>
> Q: You said, do it, fair enough?
>
> A: It was done.

A letter agreement amending the Licence Agreement was signed at about 7:00 p.m. on November 22, extending the "secure zone" to include the "Museum of Anthropology *and grounds*". The letter agreement also gave the Minister "full control" of the museum and grounds beginning at 6:00 p.m. on November 22, as opposed to 12:00 p.m. on November 24.

Once the letter agreement was signed, ACCO immediately asked Supt. May to have the RCMP remove the tenters from the museum grounds. Supt. May passed this request on to Supt. Casey at Command Centre who directed or authorized Supt. May to comply with the request and remove the tenters. Quick Response Team members and the RCMP Prison Handling Unit arrived at about 8:30 p.m. and asked the tenters to leave the site, despite Supt. Thompsett's continuing belief that their presence did not pose a security risk and that their removal might actually increase security concerns. Of the approximately 15 persons present, all but four left voluntarily. Those four were then arrested.

Mr. Carle, in his testimony, agreed that he understood that as a consequence of moving ahead the government's takeover of the museum grounds, students who were peacefully protesting had to cease that protest and some of them were arrested. He also understood that UBC did not willingly agree to amend the agreement and further, that there was no security reason to move the start date up. He was asked:

> Q: And so, isn't this a pretty clear example, if you'll be fair to me, of the--of the Prime Minister's Office taking steps which were not security related, which had a direct impact on the students--the exercise of students of their right to protest and express themselves?
>
> A: Sir, we were in charge of organizing a retreat for foreign leaders, and I mentioned that yesterday. We expressed our views, serious concern, about having vandalism done to the territory where the retreat would take place, and we, via Robert Vanderloo at ACCO, communicated that to the--to the RCMP, and from there they made the decision, sir, to remove the protestors.

11.4. Is the Museum Takeover the Subject of a Complaint?

Counsel for 44 RCMP officers submitted that the early takeover of the museum was not the subject of a specific complaint and, therefore, is beyond the scope of my jurisdiction. In contrast, Commission Counsel took the following position:

> We submit that this incident is relevant to the issue of the relationship between the RCMP and government in respect of their duties to safeguard government property and their overall duties in doing so for the ultimate protection of IPPs. We further submit that it is open for the Commission to make findings about Mr. Carle's actions, and whether he was exerting his influence on the RCMP. These findings, however, should only be made in connection with findings as to the responses by the RCMP to Mr. Carle's actions. While this issue is not the subject of a specific complaint, the Commission may consider this evidence in assessing whether the RCMP demonstrated appropriate independence of decisions made and actions taken at UBC that may have affected the right to free expression.

Although they did conclude that I could properly consider this evidence, Commission Counsel took the view that the early takeover of the museum was not the subject matter of a complaint.

I agree, however, with counsel for the B.C. Civil Liberties Association that the event falls within the ambit of the Association's complaint. That complaint asks this Commission to inquire into RCMP actions which "prevented students and others on the UBC campus from carrying out peaceful protests, where the individuals were not inside, or threatening the integrity of, security fences around official APEC sites and motorcade routes on the campus."

My view is that the acceleration of the takeover of the museum property in itself is not the subject of any complaint before me. If the effective date of the Licence Agreement had been changed but the tenters allowed to remain, there would be no issue. It is the actions that followed, as a result of the early takeover of the museum, that are in question.

I agree with the Association's submission that, although the tenters were technically inside the secure zone as a result of the amendment to the Licence Agreement, the sole purpose of that amendment was to enable the RCMP to remove people who were otherwise engaged in a lawful protest. That being so, my view is that I am entitled to determine whether the removal and arrest of the tenters was inconsistent with section 2(b) of the *Charter* and whether it was appropriate to the circumstances.

11.5. Unjustifiable Infringement of *Charter* Rights

I have concluded that the removal of the protesters was an unjustifiable infringement of their rights under section 2(b) of the *Charter*.

Firstly, there is no doubt in my mind that the federal government cannot rely on its Licence Agreement with UBC to escape its constitutional obligations. Therefore, neither the federal government nor the RCMP were entitled to simply rely upon the Licence Agreement and remove the tenters, without regard for their *Charter* rights.

Next, I am satisfied that, as a result of the Licence Agreement, and as conceded by counsel for the Attorney General for Canada, the museum grounds constituted "government property." Although the Licence Agreement did not grant the Minister an interest in real property, the Minister did obtain full control over the property, and had the contractual power to treat the property as his own. Therefore, I must engage in the type of analysis set out in *Commonwealth*, *Weisfeld* and *Behrens*, as discussed in Chapter 7.

11.5.1. Constitutionally Protected Expression

On any of the tests applied in *Commonwealth*, the erection of the tents constituted constitutionally protected expression:

- Following the approach of L'Heureux-Dubé J., the removal of the tenters from "government property" infringed the protesters' section 2(b) rights.
- Following Lamer C.J.C.'s approach, the presence of the tenters between November 22 and 24 would not have been incompatible with the museum's function as there was no event occurring at the museum during that period.
- Following McLachlin J.'s approach, I am satisfied that the government's purpose in arranging for the removal of the tenters was to restrict the "physical consequences," not the "content," of their expression. Further, there is no doubt in my mind that there is a link between the principle of participation in social and political decision-making in the community, and the tenters' use of the museum grounds.

As a result, I am satisfied that the RCMP, acting on the directions of the federal government through Mr. Vanderloo and Mr. Carle, conducted themselves in a manner inconsistent with respect for the tenters' rights under section 2(b) of the *Charter*.

11.5.2. Unjustifiable Infringement

The next issue is whether the actions of the RCMP are justifiable under section 1 of the *Charter*.

In my view, the RCMP's actions were not justifiable under the *Charter* because they were not aimed at achieving any "pressing and substantial" objective. Although Mr. Carle raised some concerns about potential vandalism, Supt. Thompsett, the senior officer responsible for site security, did not believe that the continued presence of protesters presented an imminent security risk. Rather, he believed that removing the tenters posed a greater security risk. Although the RCMP would have been entitled to remove the protesters if they had engaged in further acts of vandalism, there was simply no "pressing and substantial" reason, whether related to dignity, decorum, aesthetics, symbolism or otherwise, why the tenters should have been removed three days prior to the leaders' meeting.

Furthermore, I believe that, given the decision in *Behrens* (see Chapter 7), the RCMP authority to remove and arrest the tenters pursuant to sections 41, 42 or 431(a) of the *Criminal Code* must, in the circumstances, yield to the *Charter* rights of the tenters who were peaceably protesting on government property in a manner consistent with the ordinary use of that property.

Therefore, the RCMP conduct was neither consistent with respect for section 2(b) of the *Charter* nor justifiable under section 1 of the *Charter*.

11.6. Appropriate in the Circumstances

It does not automatically follow, however, that the RCMP conduct was inappropriate to the circumstances.

11.6.1. Failure To Assert Independence

The RCMP were solely responsible for security. Supt. Thompsett believed that removing the protesters might increase the security risk. The RCMP must not abandon its independence and accede to a federal government request that could jeopardize security operations as it did here, except in extraordinary circumstances. There were no such circumstances here.

11.6.2. An Honest Mistake

It is true that the RCMP must not accede to federal government requests that are unjustifiably inconsistent with the *Charter* rights of citizens. However, in this case, the RCMP resisted the federal government's request until they had sought and obtained a legal opinion assuring them that they had the legal authority to remove the tenters. Command Centre was advised that once the Licence Agreement was amended the federal government would be legally entitled to request the removal of the protesters and the RCMP would be legally entitled to comply. Command Centre then authorized the eviction, which was promptly carried out.

Although it is my view that, in spite of the Licence Agreement and the trespass and mischief provisions of the *Criminal Code*, the RCMP were not entitled to remove the protesters, they should be commended for seeking legal advice before acting. Given the advice they received and their knowledge that the federal government had assumed control of the property pursuant to the Licence Agreement, I am satisfied that the RCMP honestly believed that the federal government had the authority to direct them to remove the protesters and that the RCMP had the legal authority to act on those directions.

In *Campbell* (see Chapter 10), the Supreme Court of Canada considered the effect of RCMP reliance on legal advice where certain RCMP conduct had led to an abuse of process claim. The court said that "a police force that chooses to operate outside the law is not the same thing as a police force that made an honest mistake on the basis of erroneous advice." This principle is equally applicable here. In my view, the RCMP made an honest mistake on the basis of erroneous advice. Therefore, I find that, although the RCMP's conduct was inconsistent with the rights of the tenters, it was nevertheless appropriate to the circumstances.

11.7. Government Interference

Having said that, I am also of the view that the RCMP's conduct in removing the tenters was directly attributable to the actions of the federal government. It was Mr. Carle of the Prime Minister's Office who, through Mr. Vanderloo of ACCO, directed the RCMP to remove the protesters, apparently out of a concern about potential vandalism. However, Supt. Thompsett, the man in charge of security, was less concerned about potential vandalism than that removing the protesters might lead to more serious security problems.

The federal government had no authority to make decisions which may have compromised an RCMP security operation, particularly given that such decisions, although consistent with the Licence Agreement and the *Criminal Code*, were unjustifiably inconsistent with the *Charter*. I am satisfied that, in this instance, the federal government, acting through the Prime Minister's Office, improperly interfered in an RCMP security operation.

12. POLICE PERFORMANCE

I have concluded that the real explanation for what appeared to be a police "crackdown" on protests was the RCMP's failure to meet an acceptable and expected standard of competence, professionalism and proficiency in carrying out their duties.

In this chapter, I will consider the evidence relating to several incidents of sub-standard performance. In subsequent chapters, I will review in detail the specific police conduct involved in the 17 categories of complaint.

12.1. Briefings and the Late Buses

12.1.1. The November 24 Briefing

On November 24, the morning before the APEC leaders' meeting, front line security personnel were brought together at UBC for a briefing on their duties for the following day. Four officers were designated as Zone Commanders and briefed on their supervisory duties over the officers to be assigned to them. They were given the information police had gathered that there would be attempts to breach the security fence and that their duty was to maintain the integrity of that fence. They were informed about the resources that would be available should an incident occur and that video personnel would be on hand to capture any incidents on tape.

Although the briefing was limited by the extent of the background knowledge held by Supt. Thompsett and his colleagues (he was not fully aware of the planned demonstration to follow the march to the flagpole), nevertheless it seemed very much in accord with the view of expert witnesses as to what should occur at this stage.

Chief Supt. French said the briefing process is crucial because:

> ... unless we brief our people about what it is we want them to do, and how we want them to do it, then we will fail. So briefing is one of the most important elements of the whole process.

Unfortunately, because of what happened the next morning, many of the officers who were briefed on November 24 were unavailable to take up their posts on the big day.

12.1.2. The November 25 Briefing

On the morning of November 25, 131 officers were expected for a 6:00 a.m. briefing on campus similar to the one held the previous day. Those expected included the Zone Commanders and others who had been at the November 24 briefing, as well as many more security personnel who would, on that morning, be briefed for the first time. By the 6:00 a.m. start time only 30 to 40 of the 131 officers who were expected had arrived. Previously selected Zone Commanders were absent and replacements had to be appointed. The 30 to 40 present were briefed pretty much along the lines of the previous day's briefing.

12.1.3. Stray Buses

What happened on November 25 was that, because of a misrouting of buses, key personnel who had been briefed the day before were absent as the day began. Some officers who were unprepared for what would unfold that day were quickly briefed at the last minute and sent off to take the place of others who were to have filled those positions. Some received assignments as Zone Commanders at that time.

Insp. Perry Edwards explained the confusion by the fact that the bus drivers who were to bring the personnel to the campus for the 6:00 a.m. briefing instead insisted on taking them to RCMP headquarters on Heather Street:

> ... basically what happened was that the bus drivers who were tasked with bringing the members to UBC decided that they knew where they were supposed to go, that is, RCMP Headquarters at 33rd and Heather, ... they made their decisions, and even though the members told them, "No, we know where we've been tasked. We're supposed to go to UBC."' "No, no, we're taking you to "E" Division Headquarters". By the time that all got sorted out and they got back on the buses and ferried out to UBC, the clock was very much ticking on the arrival of the first motorcade, and the result was we really almost ran them into the briefing room, went through the list of who was in what zone, because there was changes between the first and second days, significant numbers of people who were being changed and made them aware

of where they were working, I think showed them basically a chart like that, and said, okay. This is zone 1, 2, 3 or west/east, and away you go. And -- because we had to get them in place and because the motorcades were, you know, expected.

Q: So you didn't get a chance to go into any detail about your plans and how to deal with demonstrations at UBC?

A: No.

12.1.4. Replacement Personnel

Cpl. David Flamank was designated on November 25 as Zone Commander for Zone 3, which included Gate 6. This was the only day he had any involvement with the APEC conference. In early November, he had been instructed to attend at 6:00 a.m. on November 25 to perform security duties on campus. His regular duties were as a forensic identification specialist at the Surrey Detachment. He had no training or experience dealing with crowds or demonstrations. Cpl. Flamank said that he was appointed a Zone Commander because the person who had been delegated to that role was absent. He said he was assigned 20 to 25 RCMP members but, in reality, when he left for Zone 3, only one other officer was available to go with him. He was given a map of the area and a portable radio. His instructions were to patrol the fence in his zone and make sure no unauthorized persons were allowed on the secure side of the fence. He said he received no instructions about what to do if crowds formed in an area within or adjacent to his zone. He said that other officers assigned to his zone filtered in within the next two hours and that Sgt. Robert Beaudoin was one of them. The two officers shared the Zone Commander responsibilities for the rest of the day. Besides the two Zone Commanders, approximately four officers were posted at Gate 6 during the morning.

The Zone Commanders were intended to be part of the management structure for the day with the Site Commander and the Deputy Site Commanders as their superior officers. Interestingly, when Supt. Thompsett was asked at the hearing whether he knew Cpl. Flamank, he said the name did not mean anything to him. That, I am satisfied, is because of the circumstances under which Cpl. Flamank's appointment occurred, and specifically the confusion over who would be assigned to the designated zones on the campus. Cpl. Flamank was present when Gate 6 was cleared late in the afternoon. More will be said about that in Chapter 28.

S/Sgt. Jerry Moloci, also from the Surrey Detachment, was also designated as a Zone Commander on the morning of November 25. He said Supt. Thompsett recognized him and told him that he would be in charge of Zone 1, which included the Green College area, and that he would be given 20 members to patrol the area. Prior to that moment, S/Sgt. Moloci was unaware that he would be in charge of a zone. After the briefing, S/Sgt. Moloci set off with 10 members, as the remaining 10 had not yet arrived. He said they dribbled in during the course of the day - sporadically, not all at once. S/Sgt. Moloci said that, while he was generally aware of the campus layout, he did not know it well as he really had never spent any time looking it over. He was given a map of the zone. There was a constable in S/Sgt. Moloci's contingent of 10 who had been at the briefing the day before. S/Sgt. Moloci said the constable "kind of knew the area and took me and showed me where it was because I didn't know what it looked like." S/Sgt. Moloci became quite involved in the events outside Green College during the morning of November 25. More will be said about that in Chapter 21.

Insp. Edwards acknowledged that it would have been better to have had full briefings but he did not consider the many absences to be a major problem because he and Insp. Larry Killaly and the Zone Commanders were in the field to lend supervisory assistance. Nevertheless, as a consideration of the complaints will show, there were negative consequences throughout the day that flowed from the absence of the full contingent of security personnel at the 6:00 a.m. briefing.

12.2. The Open Space in Front of Green College

Green College is a campus residence for graduate students. It sits on the north side of Northwest Marine Drive across from the law school, not far from where Northwest Marine Drive merges with Chancellor Boulevard at Gate 3.

The security fence was placed along the curb on the Green College side of Northwest Marine Drive and then down Cecil Green Park Road, leaving an open space consisting of a sidewalk and grassy area in front of the Green College buildings. Although the area allowed less space for protesters than was provided in front of the law school, it allowed for much closer access to the leaders. Anyone in the area in front of Green College would have access to the fence at the curb and, thus, be very close to the motorcades passing along Northwest Marine Drive as they made their way to and from the museum.

Students going to class on the main campus on November 25 needed access across Northwest Marine Drive so a system was put in place to gather students at a check point and escort them across to the campus. No such movement was to be allowed while the motorcades were arriving or departing.

The fence was constructed on Saturday morning, November 22. It was described as secondary fencing, eight feet high but without a concrete base. It was placed along the curb as that was thought to be the most stable area. The fence represented the security line that was not to be crossed by protesters and other unaccredited persons.

At some time before November 22, the location of the fence in front of Green College was determined by the RCMP. The revised Schedule A to the Licence Agreement, signed on the evening of November 22, showed the fence in the location where it had been constructed that morning. A campus map, showing the finalized security perimeter in the heavy black line, is attached as Appendix V to this report.

The fence placed the Green College buildings and the space in front of them outside the security zone and both Supt. Thompsett and Supt. May acknowledged that to be so. Supt. Thompsett and Insp. Edwards inspected the fence on Sunday morning, November 23.

12.2.1. Warning Signs

It was widely known that there was some opposition to APEC amongst the students in residence at Green College. In the days leading up to November 25, the RCMP should have been alerted to the fact that Green College could very well be an active protest location, for several reasons:

- A number of signs expressing that opposition appeared in the windows of Green College several days before the APEC leaders' meeting and were in prominent display on November 25;
- The "F*CK APEC" sign, lit with Christmas tree lights, was seen and commented upon by many persons; and
- On Saturday morning, November 22, a graduate student and Green College resident, Karen Pearlston, went out to put signs on the security fence along Cecil Green Park Road. Her signs displayed slogans including "APEC off Campus;" "secret RCMP off campus;" and "Green College is for ideas and friendship not APEC."

RCMP personnel on site that morning ordered the removal of Ms. Pearlston's signs. She protested but the RCMP prevailed. I accept Ms. Pearlston's evidence that an officer told her that the removal was due to orders from the Prime Minister's Office that there should be "no signs and no people" on that side of the street. Both VPD and RCMP officers were present at the time but the officer who spoke to Ms. Pearlston was never identified. This evidence cannot, on its own, be relied upon as a basis for concluding that the Prime Minister had in fact ordered signs down.

With several RCMP officers present during the Pearlston incident, should not a warning sign have gone up that protests in the area in front of Green College on the morning of November 25 were virtually assured? I would think so.

Similar signals arose on Sunday evening, November 23. Craig Jones, another Green College resident, taped nine 8½ by 11 inch sheets of paper spelling "DEMOCRACY" to the same fence. The next morning he posted similar signs, one spelling "FREE SPEECH" and the other "HUMAN RIGHTS." Late in the evening of November 24, RCMP officers ordered the removal of the signs. Mr. Jones unsuccessfully challenged this order to Supt. Thompsett and the signs were removed and returned to him. He taped one of them to the sidewalk and took the other two to his residence in Green College where the officers knew he lived. Should not another warning sign have gone up that Mr. Jones was likely to reappear outside his residence with his signs on the morning of November 25? Again, I would think so. In fact, Mr. Jones did just that.

12.2.2. A Gap in Planning

As should have been expected by the RCMP, some students gathered on the sidewalk and lawn at 8:00 a.m. on November 25 and awaited the arrival of the motorcades. Some carried signs, most of an anti-APEC variety. It was because of those signs that a confrontation with the RCMP occurred. Signs were seized and Mr. Jones was arrested.

In their closing written submission, counsel for the 44 RCMP officers said that ". . . no one for a moment considered that protesters could be at the Green College Site." Surely those charged with providing security services should have known that protests at Green College were a virtual certainty. Dozens of RCMP officers passed by the fence in front of Green College on November 22, 23 and 24 and several of them directed their attention towards the College. The warning signs were there.

Counsel for the 44 RCMP members also said that "[n]o one ever . . . said that protesting could occur in front of Green College." Yet it was understood and acknowledged by everyone, including the RCMP, that protesting could occur anywhere outside the secure zone.

Counsel for the 44 RCMP members frankly acknowledged that the evidence showed that: "[a]s a matter of planning, barring protest from the front of Green College beforehand slipped through the cracks." One officer referred to a "gap" in the planning while another saw it as an "oversight" that demonstrations had not been anticipated there. As a result of this oversight, according to counsel for the 44 RCMP members, at approximately 8:00 a.m. on November 25, Green College, where the motorcades would pass so closely by the security fence, was "the most vulnerable location in the whole of APEC."

What occurred during the confrontation, including the seizure of signs and the arrest of Mr. Jones, is discussed in Chapter 21.

12.3. The Noon March to the Fence

Soon after noon on November 25, some 2,500 to 3,000 protesters moved up the Main Mall towards the security fence that had been constructed at the flagpole near the Rose Garden. They were chanting "Students are here to keep the peace - watch the actions of police."

Less than half an hour before they arrived at the security fence, a decision was made to allow the protesters unobstructed access to the fence, in spite of a long-standing plan that had called for that access to be blocked by a cordon of police officers.

When the protesters arrived at their destination and found no officers between them and the fence, some of them jumped on the concrete base, pulling on the fence. It collapsed almost immediately, trapping beneath it some of the protesters and some others who had rushed in from the sides when they saw the calamity at hand. Bedlam broke out, pepper spray was dispersed, arrests were made and tensions rose as the police struggled to gain control. Many complaints were made about police conduct in this period and they are reviewed in Chapter 23.

The decision to allow the protesters direct access to the security fence may have been the most significant of many policing decisions that were made that day. The circumstances surrounding its making speak volumes about the inadequate state of police readiness to deal with a demonstration that they had known for some time was scheduled to take place at this location and at this time.

12.3.1. Police Resources

I am satisfied that adequate police resources were assembled at the Rose Garden to deal with the march that would be the culminating event of what had been advertised as "Crash the Summit."

The Quick Response Teams and two tactical units were on hand, as well as approximately 130 RCMP officers serving as security personnel in the four zones that had been established. Each zone had its own commander who had responsibility for 30 to 40 officers. These officers were stationed all along the security fence, including the flagpole area, most of them on the public side, explaining to those nearby that the fence was a boundary that they were not to cross.

At the flagpole, on the public side of the fence, were more than 150 members of the Quick Response Teams, including 60 VPD members on mountain bikes, all under the command of S/Sgt. Hugh Stewart. Their specific purpose was to provide security at the point where the marchers were expected to approach the fence.

In addition to the Quick Response Teams, there were many RCMP officers located on the inside (secure side) of the fence at this location.

On standby and out of sight in the Rose Garden parkade were the two tactical units:

- the RCMP National Capital Regional Tactical Troop of about 60 members, as primary responder; and
- the VPD Crowd Control Unit of about 70 members, as secondary responder and support.

The VPD Crowd Control Unit deployed at two levels:

- At level one, members wear a soft hat with "Police" on it, crowd control coveralls, regular issue VPD nylon jacket and a side arm.
- At level two, members wear a hard had (helmet with visor), no side arm, a gas respirator bag, an outer vest with protective padding for upper body, groin and spine, and a 36-inch or 24-inch wood baton. Some are also equipped with a clear plastic shield 36 inches long by 24 inches wide.

The RCMP National Capital Region Tactical Troop respond only in level two attire.

12.3.2. The Protesters' Plans

The protesters did not expect that they would be allowed unobstructed access to the security fence. Sabrina Bonfonti, who was among those at the front of the march, was one of those who testified as to the protesters' intentions:

> . . . we anticipated walking up to the police and had the impression that even by leaning into them slightly we would be arrested, most likely. And that - so that's what we were expecting so that's why we were really confused when they left.
>
> Q: So when you saw the police that was in front of the fence, initially your intention was to go up to them and lean and be arrested?
>
> A: Yes.
>
> Q: All right. And how far were you from them when they moved out of the way?
>
> A: Just fairly close, like, a foot.
>
> Q: Okay. And did that happen right away or was there a--was there anything else that occurred?

A: There--there wasn't much of a standoff, like it was pretty much as we got up to them--

Q: Yeah?

A: --like we had hardly stopped moving, like they just turned right as we approached them.

Q: Okay. So what happened then?

A: Then we stood there for a minute because we were, like the people that I was linked arms with, we were kind of, sort of looking at each other like, well, what are we gonna do now because the whole idea was that there was gonna be a line of police and we'd lean into them but now they're not there. So, just kind of, I mean there wasn't a large meeting or anything but by talking to the people on either side we said, well, we're standing in front of the fence, so let's--I bet if we start to climb on the fence that they'll come back and arrest us then.

Q: Okay.

A: So, that's what we did.

Q: So that was decided upon and--and you in fact did exactly that; is that correct?

A: Yes. I myself didn't get very much onto the fence, I reached up with two hands but then it--that's when it fell.

I am satisfied that Ms. Bonfonti's testimony reflected the attitude and intention of an overwhelming majority of protesters as they approached the security fence that day. They would come to the RCMP line and apply pressure in what would be a futile attempt to get through the line but would result in many arrests. That was the planned civil disobedience. It was the manner in which the protesters, in full glare of the media, were going to make their dissent known with respect to APEC and the objectionable things, from their perspective, for which it stood.

But if the protesters thought that they would be permitted to tie up police resources by presenting scores of bodies to be arrested, they were mistaken. After all, the primary police responsibility on that day was to protect the international visitors then on site. In fact, later in the afternoon when protesters tried similar tactics, police made a reasonable number of arrests and then called a halt. The protesters accepted that there would be no more arrests and sought other avenues of protest. If police had taken a similar approach to the protesters at the flagpole, rather than withdrawing their officers from the fence, the incidents that led to so many complaints might have been avoided.

12.3.3. Police Information about Protesters' Plans

The protesters' intentions to bump into the police at the fence line were no secret from the police. Also, there were indications that a much smaller number of protesters would try to actually breach the security fence and the RCMP anticipated that such attempts would be made.

Cpl. Keith Boutilier was in charge of the Analytical Intelligence Unit of the National Security Intelligence Service for the APEC conference. This unit's mandate was to collect and analyze information from a variety of sources for two purposes:

1. to identify any real or perceived threat against any of the Internationally Protected Persons; and
2. to identify which individuals or groups might use the APEC conference as a forum for their protests.

Cpl. Boutilier was asked what information the Threat Assessment Group had passed on to the RCMP in respect of the anticipated protests at UBC. He said that their information suggested that a core group of people were going to participate in what protesters had described as "civil disobedience, vigorous non-violent, protest action." They knew that a core group was prepared to be arrested and that in fact some of these individuals were arrested for their anti-APEC activities in the days leading up to the meeting itself. Cpl. Boutilier said:

> A: So with all those factors being taken into consideration, our evaluation for the security details packages at UBC, was that there was strong indication that some of these protestors were certainly going to present problems to the security details, in their efforts to breach or enter the security zones.
>
> Q: Did you receive information from Corporal Chrustie that the protestors for the main demonstration, if police were not on the inside of the fence, but were on the outside, intended to go up to the fence and blow bubbles through the fence?

A: I had no knowledge of that.

Cpl. Boutilier agreed that the following would be an accurate summary of the information passed on to the RCMP:

> On the one hand, there was no real or perceived threat to any of the IPP's, but on the other hand, you had better be well prepared to deal with protests, including protests where you may have to arrest individuals engaging in civil disobedience.

Many intelligence reports were distributed to key RCMP personnel. The report distributed early on the morning of November 25 contained information that APEC Alert's protests would be focused at UBC that day and that the group planned to organize at the Student Union Building at 7 a.m. The report also relayed information that between 9:00 and 11:00 a.m. the group would gather at the Goddess of Democracy statue, near the Student Union Building, with activities to include a "mock trial" of President Suharto. They were expecting to be joined by students from other local campuses, who would arrive by bus. Between 11:00 a.m. and noon they planned to march through the campus down the Main Mall to Norman Mackenzie House, stopping to perform a skit in front of the security detail. Further, the report contained the following note:

> **Important**: Very reliable information indicates 15 protesters from East Timor Alert Network (ETAN) have agreed to breach the security fence. Their strategy is to go in groups of five at separate times to different sections of the fence. Anticipated start time is 09:30 hrs. Departure point is the Goddess of Democracy.

At 5:30 a.m. on November 25, an APEC Duty Officer Briefing Report in Command Centre recorded similar information.

Supt. Casey, who was in joint command at Command Centre, agreed that at 6:00 a.m. the police had information that, beginning at 9:30 that morning, there would be "waves of students trying to attack security at UBC. . . . The first wave five plus students, attention seeking, will happen minimum three times today. Always in front of the media."

At 11:00 a.m. the police had received reports that "some 300 plus students are planning to march to the flagpole at the UBC to stage a die-in. This action is a part of the planned protest events. Indications are that the only offensive tactics that they will use against the police is to get in their way by bumping into them."

S/Sgt. Stewart, who was out at the fence, was quite aware of this information. He and several others testified that they understood there would be three attempts to breach the fence that day. S/Sgt. Stewart said:

> There was a considerable amount of intelligence that was brought forward, sir. There was intelligence that suggested that there would be three attempts on the fence. That there would be an attempt to surreptitiously cut the fencing in one location, and for a number of persons to break through. That there were persons intent upon physically arresting Mr. Suharto. So yes, sir, I did have some intelligence in that regard.

In fact, for a long time Supt. May had known a great deal about the plans for student demonstrations on November 25. Given his APEC related responsibilities which began in 1996 and required his full time involvement through 1997, there should have been no surprises for the RCMP that morning insofar as demonstrations were concerned. Supt. May agreed that he had been aware of the anti-APEC sentiments being expressed on campus and that there were plans in place weeks, or even months, in advance of November 25 for a major demonstration near the flagpole. Further, he and his associates had known for a considerable length of time about the protesters' plans to bump into the police line at the fence.

Site Commander Supt. Thompsett testified as to his expectations. Given the anticipated breach of the security fence, he said that the fence at this point was "going to be manned in the sense that there will be police officers positioned along this fence."

12.3.4. Relationship between Police and Protesters

Sgt. McLaren, who was present as the march approached the fence, said the demonstrators were in high spirits, well organized and peaceful. In the days preceding November 25 there had been many orderly demonstrations and protests in downtown Vancouver in which the leadership of the protesting groups worked with the police to the benefit of both protesters and police. Supt. May expressed the general policy of the RCMP when planning events of this kind:

> Generally, we meet with the organizers to determine what their objectives are and if there's any way we can assist them in meeting those objectives, while at the same time, making them aware of what our obligations are to protect the IPP's. In other words, we try to work with them, and--to ensure that we both reach the objectives that we set out to achieve.

I consider this to be a very sound policy which should be continued in the future.

There were, however, a few people involved in the leadership core of APEC Alert whose attitude was bitter and hostile towards what they saw as APEC's purpose. This attitude spilled over into antagonism and ill will towards the police and made the policing task far more difficult than it otherwise would have been.

Cst. Charles A. Breakey, who worked with the protest groups under the guidance and direction of Cpl. Boutilier, described APEC Alert as the only group of protesters that was overtly uncooperative. I am satisfied that the leaders of APEC Alert were uncooperative, although those in that category declined to acknowledge holding leadership responsibilities. In my judgment, the RCMP made reasonable efforts to make their policy work and any responsibility for a failure to establish a cooperative working rapport with APEC Alert does not rest with the RCMP.

12.3.5. The Police Decision to Move Away from the Fence

I now turn to consider what prompted the RCMP to move away from the security fence where Ms. Bonfonti, her associates and Supt. Thompsett had expected them to remain. This involves a consideration of the role, responsibilities and performance of Supt. Thompsett and the two deputies he had appointed to assist him.

12.3.5.1. The contingency plan

As November arrived, Supt. Thompsett remained in Chilliwack, fulfilling his responsibilities as District Officer for the Southwest Division. As I have mentioned, Supt.

Thompsett's was a senior position with supervisory responsibilities over 24 detachments including large urban detachments in the lower mainland. As I understand it, other than that of the Commanding Officer, this is the most senior RCMP position in "E" Division which encompassed the whole of British Columbia.

On November 9, Insp. Dingwall e-mailed Supt. Thompsett to ask if he had found an officer to prepare a "demo/passive resistance contingency plan." Insp. Dingwall explained at the hearing that a contingency plan is intended to deal with potential problems that could arise at an event, and to focus those with responsibility on all the potential "hot spots" and problems so that the best security package possible would be in place to deal with attempts to breach security. That same day, Supt. Thompsett asked S/Sgt. Stewart to prepare the contingency plan, pointing out that this document would fall under Staff Sgt Stewart's mandate. Although S/Sgt. Stewart intended to prepare the plan, he was told by his immediate supervisor, Insp. Forsythe, that this was not within his area of responsibility. S/Sgt. Stewart explained:

> I was reminded by Inspector Forsythe that that would be inappropriate because there was a number of sites asking us to develop plans, that I had not been aware of and that the plans were the responsibility of the Site Commander and that he would be speaking directly to Superintendent Thompsett in that regard. And that I wasn't to develop the plan.

In his November 9 e-mail, Insp. Dingwall had identified a number of officers without APEC responsibilities who could be brought on board to assist Supt. Thompsett, including Insps. Killaly and Edwards. Supt. Thompsett contacted each of them. Insp. Killaly was on holiday and not expected to return until about November 15. Insp. Edwards volunteered for whatever duties Supt. Thompsett wished to assign to him. They met in Vancouver on November 13 and Insp. Edwards was instructed to prepare the contingency plan, setting out the RCMP response to potential protests and demonstrations on November 25. Insp. Edwards said he prepared a draft plan at the RCMP UBC Detachment office on the evening of November 22. It seems that the draft was read and approved orally by Supt. Thompsett. However, as time was getting short, the document never went any further and did not go through the approval process that had been put in place many months before.

Insp. Killaly came to UBC on November 20 to take up whatever duties Supt. Thompsett had for him. Insp. Killaly said that all he did was glance at the draft and that a meeting to discuss it never occurred. No further attention was paid to the document due to the shortage of time before the leaders' meeting.

12.3.5.2. Deputy Site Commanders

Supt. Thompsett, as Site Commander, fixed Insps. Killaly and Edwards with further and very important responsibilities. Realizing that he would need assistance in the field on November 25, he appointed the two men as Operations or Incident Commanders. These appointments were made some time between November 20 and 22. Supt. Thompsett described their duties and responsibilities as being:

> ... if an incident or event occurred during the course of the - of the day at UBC or before, the day before, whatever, that required a police response, these two gentlemen would be responsible for going to that particular incident and taking command of the incident on the front line.

While it was clear that Supt. Thompsett would be available to consult with the Inspectors if necessary, they were nevertheless empowered to make full and final decisions with the same level of authority as Supt. Thompsett himself had as overall Site Commander. In effect, they were deputy Site Commanders with full authority to take charge in respect of any incident and to make whatever decisions they felt the circumstances warranted.

S/Sgt. Stewart, who had considerable interaction with both Inspectors on November 25, correctly understood his and their role and rank in the chain of command, particularly with respect to where he stood as Commander of the Quick Response Teams. S/Sgt. Stewart said:

> Everyone at the site, sir, fell under the Site Commander Supt. Trevor Thompsett and his two Operational Commanders, Insp. Killaly and Insp. Edwards. And we all took our direction from them.

He also said:

> No one takes action, unless it's under the direction of the Site Commander. You have no freedom of command in that type of situation, sir. You do not act on your own volition.

He was asked again about the chain of command:

> Q: Okay. Was it your understanding, then, that when you were at UBC that you would take direction from Members of the Site Management structure?
>
> A: Absolutely.
>
> Q: And who did you anticipate that would be?
>
> A: We anticipated it would be either Edwards or Killaly, or on occasion, Superintendent Thompsett.

S/Sgt. Stewart was not involved in the overall decision making process for the events of November 25. He emphasized, quite correctly, that his involvement was with the Quick Response Teams and that he did not have charge of the site. He and his teams were there to respond, under the direction of the Site Commander, his Deputies and Command Centre. He at no time saw the UBC site plan nor the contingency plan drafted by Insp. Edwards for demonstrations and protests.

12.3.5.3. The security fence

The fencing at the flagpole location was described as "Indy" style. About 10 to 12 feet high, it was constructed of chain link wire mesh attached with light weight plastic ties to upright steel poles. The poles sat in holes within cement blocks set on the ground.

Supt. May was responsible for the selection of the type of fencing used. He had no knowledge of how it was to be secured to the cement blocks and he did not personally inspect the fence after it was installed because that was the responsibility of the Site Commander, Supt. Thompsett.

Supt. Thompsett did make a tour of the fencing. It was completed on Saturday evening, November 22, and he toured it Sunday morning with Insp. Edwards.

Unfortunately, the fence construction had at least three deficiencies that threatened its utility for its intended purpose of keeping unauthorized persons out of the secure zone:

1. the plastic ties attaching the wire mesh to the poles were inadequate;
2. the bottom of the fence was left unsecured and could be lifted up, allowing passage under the fence and over the concrete block or curb; and
3. the lack of horizontal wiring through the fence at the bottom, middle and top left the fence quite unstable and liable to collapse if anyone were to pull on it.

Supt. Thompsett took steps to have airplane wire attached horizontally across the bottom of the fence, intertwining it with the upright poles. That was sufficient to prevent protesters from lifting the bottom of the fence and preventing entry over the top of the concrete blocks. The other two deficiencies were never corrected. That is to say, the weak plastic ties were left in place and horizontal wire was not attached at the middle or top of the fence. Supt. May did not become aware of these deficiencies until the unfolding of the events of November 25. He said that the fence, with its deficiencies, certainly did not meet his expectations.

S/Sgt. Stewart did not inspect the fence. Like Supt. May, he saw that as Supt. Thompsett's responsibility. S/Sgt. Stewart said he assumed that it was properly constructed and had been examined.

Insp. Killaly said he did not inspect the fence other than walking around to look at it.

Insp. Edwards was aware of the steps taken by Supt. Thompsett to secure the bottom of the fence. As to the possibility of the fence being pulled open at the top and coming down, he said that, although he did not consider that possibility further, he knew that site security officers would be present and he expected that they would intervene if someone tried to gain entry to the secure zone by pulling down the fence.

Sgt. Anderson was aware of the problem but considered that the installation of the extra wiring across the bottom of the fence was sufficient.

VPD Insp. Ken Doern said he told Supt. Thompsett and Insp. Edwards on Sunday evening, November 23, that he did not believe that the newly installed bottom wire sufficiently dealt with the fence deficiencies. He believes that he likely communicated the same to Insp. Killaly the next day. He said that, on the evening of November 24 at the Beatty Street Armouries where the Quick Response Teams assembled each day, he had expressed his concerns about the fence to S/Sgt. Stewart.

Supt. Thompsett continued to consider whether the fence was stable enough to serve its purpose, even after the bottom had been strengthened with the wire. He said that he had not forgotten about the plastic ties, but felt that even though he was not totally satisfied with them, obviously someone had approved the fence construction and decided that this was the way it would be.

Having secured the bottom of the fence, and given the short time frame and his understanding that RCMP officers would be positioned all along the fence, Supt. Thompsett did not pursue the matter further. That was the state of affairs as the marchers approached the fence.

12.3.5.4. A change in plans

I return to the events at the flagpole before noon hour. As at 11:30 a.m., the police plan was to have the Quick Response Teams, including the Bike Squad component, lined up in front of the fence in the area where the marchers were to arrive. Certainly this was what Site Commander Supt. Thompsett expected.

But between 11:30 a.m. and 11:45 a.m., information came to the RCMP line to the effect that, if there was no RCMP line at the fence, the protesters intended simply to approach and blow bubbles through the fence. This intelligence prompted a decision by someone to move the RCMP line aside and allow protesters unobstructed access to the fence.

Sgt. McLaren testified that about half an hour before the march down the Main Mall, he met with Sgt. Calvin Chrustie and Cst. Leach who told him "that the march was going to take place and the protestors planned on marching to the flagpole towards the fence. If there was an RCMP line at the fence line, their plan was to march with their arms folded across their chest, and that they would bump into the RCMP line looking for some kind of a reaction. If there was no RCMP line at the fence, then their objectives were to go to the fence and symbolically blow some bubbles through the fence." Sgt. McLaren passed that information on to S/Sgt. Stewart.

I have concluded that it was Cst. Leach who obtained this information in his work as a member of the undercover team working under Sgt. Chrustie. I do not know its original source, but it was this information that resulted in a change in RCMP plans at virtually the last minute.

Chief Supt. French said, and I agree, that the question of whether the protesters would have access to the security fence was a planning issue that should have been resolved in advance, not something that should be the subject of a last-minute decision on the ground.

Expert witness Insp. Ernest Ryan, Unit Commander in the Public Safety Division of the Toronto Police Service, testified that because the fence was not a permanent structure, it would have been prudent not to allow access by protesters. He said that RCMP tactics have to be responsive to information as it is received and if there was information to indicate a potential breach, the RCMP needed a fall back position:

> And the fence is the . . . first fall back position. if there's a RCMP line ahead of it. You also have to weigh that against the requirement of the--the demonstrators to - to be positioned to where they're happy with their demonstration.

12.3.5.5. Who decided to allow access to the fence

Other than Command Centre, of whose involvement there was no suggestion, only Supt. Thompsett and Insps. Edwards and Killaly had the authority to make the decision to open access to the fence.

S/Sgt. Stewart was clearly supportive of giving direct access to the fence on the basis of the recently received information about the protesters' bubble plan. He said he expressed that support to Insps. Edwards and Killaly, who were both present at the fence - Insp. Edwards inside, within the secure zone, and Insp. Killaly outside, in the public area. However, I am satisfied that S/Sgt. Stewart did not make the decision. He knew that it was not his to make.

Supt. Thompsett did not make the decision. At the time, he was attending to responsibilities at his command headquarters near the museum. He was neither informed of nor consulted about the "bubbles" theory. In fact, his knowledge of the march itself was scant:

> Q: Did you have information as to how the Crash the Summit Demonstration was going to occur in the late morning of November 25th?
>
> A: No, no. Other than it was being referred to as 'Crash the Summit'.
>
> Q: Well did you know there was going to be a demonstration where the protesters were going to march up to the fence near the Rose Garden parkade?
>
> A No.
>
> Q: You didn't know that?
>
> A: I didn't know exactly what it was. I knew it was going to be a march on -- and I believe at one time there -- I may stand corrected, now maybe there was an occasion when I -- there was going to be a march. I'm not sure if was referred to as the Rose Garden, but there was going to be a march, And I'm not certain exactly where it was going to be, but now that you recall -- or mention it, I think there probably was a reference that they would be meeting at the Democracy and moving towards the -- the site.
>
> Q: Did you provide any briefing information about that plan to the officers on the morning of the November 25th?

A: That they would be coming -- other than that our site is -- the security is going to be breached and that that particular area, in other words, when we look at the area, there's the -- there -- I went through where the areas are and the geographies of it, and we looked at the far side and up there. But I can't recall if I got into any specifics on that.

Insp. Killaly did not make the decision. He testified that as far as he knew, the protesters intended to go up to the fence and "shout and holler and whatever, hold up signs, that type of thing." He said that he believed he heard of the decision to allow access to the fence and about the "bubble" plan from Supt. Thompsett, but he was wrong about that. Supt. Thompsett knew nothing about it.

Insp. Edwards was quite blunt that the decision could not have been made by him.

Q: Were you privy to intelligence information about the protestors wanting to blow bubbles through the fence?

A: Blow bubbles?

Q: Yes.

A: I don't recall that one.

Who made the decision to allow the protesters unobstructed access to the fence - perhaps the most significant decision made that day - remains a mystery. In spite of all the well known information gathered by police about the students' plans when they reached the fence, someone relied on the belief that they only intended to blow bubbles through it and on that basis, decided to withdraw the police line and allow access to the fence. Once that happened, the students began to climb on the fence, it fell, and the pepper spray confrontation ensued.

Tempting as it is, I hesitate to go so far as to say that the RCMP decision was wrong because I am not privy to the background of the intelligence relating to the "bubbles" theory. I do go so far, however, as to associate myself with the following paragraph in the closing submission of counsel for the B.C. Civil Liberties Association:

> Having failed to either select an appropriate fence or adequately reinforce the Indy fencing, the RCMP could still have saved the situation by not allowing the crowd to

> get close enough to the fence to touch it. This was not done. Based on dubious "intelligence", the RCMP allowed the crowd to approach right up to a fence in which RCMP officers had already identified weaknesses, and despite having supposedly received other intelligence which supposedly indicated that students were planning to breach the fence, and despite knowing in fact that students had expressed their desire to engage in a symbolic arrest of President Suharto, one of the IPPs who was on the other side of the fence. Given those factors, it is a mystery how the RCMP could have failed to foresee that protesters would climb onto the fence and that the fence would collapse.

It was suggested in a question to S/Sgt. Stewart that if the fence had never come down, the situation might never have deteriorated into the confrontation that occurred that day. He agreed, and so do I.

12.3.6. An Impossible Position

Supt. Thompsett and Insps. Edwards and Killaly were put in an impossible position. Supt. Thompsett was given far less time than was necessary to meet the major responsibilities that the role of Site Commander placed upon him. Insps. Edwards and Killaly had no knowledge, when November arrived, that they would even be involved in the APEC conference at all, and yet they were given weighty responsibilities on very short notice. They lacked the background knowledge gathered over several months which was all reposed with those who were involved in the planning of the event and who, due to the structure created by the RCMP, were not involved in putting the plan into effect.

There may be situations where such a structure is appropriate. This was not one of them. I reach that conclusion for the reasons expressed by Chief Supt. French as recorded in Chapter 5 of this report. The inappropriateness of the planning/delivery dichotomy was made clear by Insp. Dingwall who incorrectly believed that he retained a command function at UBC on November 25. He was questioned about whether there was a difference of opinion between him and Insps. Killaly and Edwards about certain security risks that day:

> A: What I will say is that I was on APEC for 15 months in the planning stages. The other two Deputy Operations Commanders were brought in, I suspect, maybe 10 days before the event --

Q: Who are we talking about, Killaly and Edwards?

A: That's right. And one of the -- in fact, I suspect that -- and I believe I suggested them along with probably five or six others that could fulfill that role, their knowledge base about APEC, whether you're talking in general or specific, was different than mine.

Exactly!

12.3.6.1. The Crowd Control Unit

There was considerable activity around the fence line at the flagpole about the time it was decided to allow the protesters access to the fence. Just before the noon hour, Insp. Edwards was approached by Insp. Doern. Insp. Doern was concerned about his ability to deploy his Crowd Control Unit from its "out of sight location" in a timely manner if the fence were breached and the crowd were to rush forward toward the museum. At this point, the two Inspectors watched the crowd growing and thought the protesters were becoming fairly strident. Insp. Edwards described the advice he was given by Insp. Doern as follows:

> My advice is we get the Crowd Control Unit out across the Plaza there, both for the reasons of being in place, should the fence get breached and also I think it's fair to say in my mind, was that you are also sending a bit of a message to the crowd. You know, you're there, you're behind the fence, that's okay. If you come across the fence and try to get through it's not going to happen anyway. You're going to have another line of RCMP officers to--to deal with and clearly, you are going to be stopped from going down. If you have serious intentions of going towards the Conference site or that, it's not going to happen, so--

Insp. Edwards then authorized, as he was empowered to do, the presence of the VPD Crowd Control Unit on the plaza. At about noon, Insp. Doern led his unit, dressed in "level one" attire, into the secure zone. They formed up facing the fence with the protesters gathering on the other side. They were one long line of 70 officers.

Insp. Doern observed the crowd grow quieter after the arrival of the unit. However, less than 10 minutes later, he was told by Insp. Dingwall to return the unit to its "out of sight location." Insp. Doern said he voiced his disagreement to Insp. Dingwall. As the unit was under RCMP control he complied, although he was upset and resentful of the order. Insp.

Doern said he knew that Insp. Dingwall was neither the Site Commander nor the Assistant Site Commander.

Insp. Dingwall explained to the hearing that he did not want to create a confrontational situation by making the area look like an armed camp. He said he consulted with Insp. Edwards and S/Sgt. Stewart before the VPD Crowd Control Unit was sent away.

It is apparent that S/Sgt. Stewart did not favour the presence of the unit but the decision was not his to make.

Insp. Edwards said he did not change his view but that he was essentially overruled. He thought the decision had come from Command Centre after perhaps a telephone call by either S/Sgt. Stewart or Insp. Dingwall. Insp. Edwards said he was surprised at being overruled as he would have thought that the flow would have been through Supt. Thompsett as Site Commander.

There was no reason or need for Insp. Dingwall to have injected himself into this matter. It was likely his view that, given his 15 months of involvement in the planning process, he was in a more knowledgeable position than Insp. Edwards and, therefore, his involvement was justified. However, as he was not in the chain of command, it was not.

There was a sharp difference of opinion at the hearing as to whether the VPD Crowd Control Unit was brought out again after the fence had collapsed. Both Insp. Doern and Insp. Edwards believed that it was not. Insp. Killaly did not recall a second appearance. In contrast, S/Sgt. Stewart was definite in the view that the unit returned after the fence came down. He was supported in that by Cst. Robert J. Fulks, Sgt. McLaren and Cst. Ronald Bieg. That was also the very definite view of two of the protesters who were on the public side of the fence at this point in time.

12.4. Blockage of the Exit Routes

12.4.1. Exit Routes

There were three possible exit routes from the Museum of Anthropology where the 18 APEC leaders were meeting on November 25, 1997:

1. From the museum, left onto Northwest Marine Drive, past Gate 3 and then straight ahead along Chancellor Boulevard, which becomes 4th Avenue;
2. From the museum, left onto Northwest Marine Drive, past Gate 3 and then veering left to continue on Northwest Marine and down towards the oceanfront; or
3. From the museum, right onto Northwest Marine Drive, which ultimately becomes Southwest Marine Drive, past Gate 6 and on out of the campus.

The longstanding plan had been for the motorcades to leave by the first-described route although a few were to leave by the third route, going directly to the airport.

12.4.2. The Students' Plan

About 2:00 p.m., the protesters began a trek from the flagpole area, past the law school building, through the Vancouver School of Theology grounds to the point where Chancellor Boulevard, a four-lane roadway with a wide grass median, intersects with Theology Mall to the south and Newton Crescent to the north. At that point, the fence forming the south boundary of the secure zone ended, allowing full access onto Chancellor Boulevard, one of the three possible exit routes from the campus.

By 2:30 p.m., 150 to 200 protesters were seated on Chancellor Boulevard at the Theology Mall/Newton Crescent intersection, effectively blocking that exit route. The many RCMP officers present tried unsuccessfully to persuade the protesters to move off the roadway so motorcades could pass.

The protesters then decided they would try to block all three exits. One of them, Mark Brooks, used a megaphone to announce that he would head down Marine Drive and he invited anyone interested to join him. Some stayed where they were but about 40 to 50 people joined him. The destination was Gate 6 although Mr. Brooks did not know it by that designation. Others went to the intersection of Marine Drive and Newton Wynd to block the remaining exit.

Command Centre had been advised at about 2:45 p.m. that the protesters had devised a plan to attempt to block all three exits. By 3:00 p.m. Insp. Mullen, who was in charge of motorcades, circulated word that all three exits were compromised.

At that point, Command Centre was aware of the situation, as were the many officers out in the field, including Supts. May and Thompsett and Insps. Dingwall and Edwards who were near the Chancellor Boulevard exit. S/Sgt. Stewart was present as well and Insp. Doern of the VPD Crowd Control Unit and Insp. St. Martin of the National Capital Region Tactical Team also arrived to assess the situation.

12.4.3. Gate 6

Mr. Brooks and his group arrived at Gate 6 very soon after 3:00 p.m. Four RCMP officers were there, including Cst. Marie Potvin. She had been assigned to the zone that included that area at 7:00 a.m. together with three other officers and Zone Commander Cpl. Flamank. During the day these officers performed traffic duties. Wooden barricades had been set across the road to prevent the traffic on Marine Drive from gaining entry to the campus beyond that point. The barricades were moved from time to time to allow access to accredited vehicles. Other vehicles were rerouted to the right, up University Boulevard.

Cst. Potvin testified that Mr. Brooks approached her:

> . . . . and he told me that he did not have any problems with the police and he didn't want to fight with the police, that they were just going to protest against the other people. And that they wanted to sit in the middle of the street where we were.

Mr. Brooks spoke over the megaphone to his associates, telling them that, if the RCMP asked them to move they should do so unless they had thought about it long and hard and were prepared to be arrested. He expected that the protesters would be given the opportunity to get up and leave if asked to do so and he asked the RCMP to give them fair warning to clear the road if that was the police intention. This happened before S/Sgt. Stewart arrived, with two of his Quick Response Teams, at about 3:45 p.m.

Cpl. John Gulayets and his Quick Response Team of eight to 10 officers were already present when S/Sgt. Stewart arrived. Cpl. Gulayets had gone to Gate 6 on his own initiative when he realized that protesters had been moving in that direction. He and his team took up positions on the road behind the barricades and were joined by the four or five other officers present. Cpl. Flamank was there. Cpl. Gulayets realized that the number of protesters was growing and, like Cst. Potvin, he found them to be passive and cooperative. On one occasion, the protesters readily moved from the roadway to allow for an ambulance to pass. Cpl. Gulayets observed:

> Actually most of them were pretty passive. They were sitting - - about half were sitting on the ground, the other half were standing. There was one with a bull horn. Some of the protestors were chanting chants, I guess, whatever, you know, whatever they do. And basically it was actually quite peaceful at that point.

It was this group of protesters that S/Sgt. Stewart was ultimately instructed to move from the road in order to make way for the departing motorcades of the 18 APEC leaders.

12.4.4. Police Planning

Were the RCMP planners aware of the prospect of a blockade of all three exit routes and the seriousness of such an event, from the perspective of the safety of the 18 leaders? Leaving aside for the moment the information that the RCMP had on that subject, the application of common sense by reasonable people surely would have alerted them to the possibility and potential gravity of such an occurrence.

Insp. Dingwall spoke of the seriousness of the blockade of all three exit routes:

> I can tell you that I was very concerned about, at one point, all three exits were blocked at UBC. To me that's a -- that's a huge security risk, and the, I mean, there's -- there's many, many possibilities here, and one is simply, should a leader have to

> depart that location, for whatever reason, whether it's to deal with the Iraqi tension as it was going on, whether it was to deal with a -- a serious situation in their home country, or whether they had a medical problem and -- and many had -- had doctors with them. But if -- if they needed treatment, they needed whatever, we were blocked in. And -- and frankly that was unacceptable to me at any time. Let alone the onset of night, again having 18 leaders sequestered in one location for that length of period, it was simply unacceptable and -- and it had to be resolved.

Supt. Green was assigned two major responsibilities for the APEC conference:

1. He was a member of the Security Steering Committee chaired by Supt. May, which position placed him within the inner circle of RCMP planners; and
2. He was one of the overall Commanders within the Command Centre during the APEC Conference, and was on duty in the Command Centre on the afternoon of November 25.

When asked about his awareness of the possibility of protesters blocking the exits, Supt. Green indicated that he and, presumably, his colleagues on the Security Steering Committee, were attuned to the obvious:

> Well knowing that there . . . was limited access out of there, you know those contingencies were always part of the planning process.

Before assessing what was done to prepare for such an eventuality, I turn to specific information that was known to the planners.

RCMP members had attended an APEC Alert meeting where the group discussed the feasibility of establishing roadblocks either prior to the diplomats' arrival or to prevent their exit from campus. They discussed the fact that there were three possible routes in and out of the campus and they therefore would require a number of bodies to successfully block all of the routes simultaneously. This intelligence was made known to the planners, as was the following paragraph, contained in the November 19 daily Threat Assessment Group bulletin:

> E-mail from Jonathon OPPENHEIMER (identified in TAG Threat Assessment p. 57) to APEC Alert members, copy attached. This e-mail reflects a proposed shift in protest strategy by APEC Alert for UBC on November 25th. To this point all protests were scheduled to take place on UBC grounds as close to the Museum of

> Anthropology as the protesters could get. The new strategy suggests placing protesters/pickets on the three main routes into the university.

Mr. Oppenheim's e-mail, dated November 18, was in the possession of the Threat Assessment Group either on that day or early the next morning and read in part as follows:

> if you look at a map of the security zone there are 3 possible routes they can take in or out, Northwest Marine, Chancellor and Southwest Marine. I think Northwest Marine is the most likely route, but who knows. So if people want to greet the limos, they should let someone at the tent city know which road they will try to picket and that way, we can ensure that all 3 roads are covered.

Supt. May agreed that he was not surprised to learn that the students had blocked Gate 3 because he had known for several days about discussions among anti-APEC groups encouraging people to block the exits available for motorcade departures.

What plans were put in place to deal with the possible blockade of the three exit routes available to the APEC leaders leaving the museum? The answer is that there was no recorded plan to address what Insp. Dingwall described as a "huge security risk." The evidence shows:

- The draft operational plan for protests and demonstrations prepared on Supt. Thompsett's instructions by Insp. Edwards did not specifically address the potential blockade. He and Insp. Killaly, who saw the plan, lacked both the time and the background needed for thoughtful consideration of the problem. In any event, I doubt that it was the responsibility of the Site Commander to plan for possible blockades. As Deputy Site Commander, Insp. Edwards said the protection of the exit routes was "not our problem to deal with:"

  > There was a specific Alpha '97 or overall APEC function of route security and that was their issue and the motorcades themselves, obviously to deal with.
  >
  > . . . As I say, tne route security was specifically in place to deal with those routes and of course the motorcades also have their own structure of RCMP officers there and so on.

- Insp. Robert Moulton who, as duty officer, played a key role in Command Centre on the afternoon of November 25, was not aware of any specific advance plans for clearing demonstrators from the roads.

- Supt. Casey, who shared overall command in the Command Centre at this critical time with Deputy Chief McGuinness of the VPD, knew of no such plan. Like Supt. Green, Supt. Casey was a member of the overall Security Steering Committee chaired by Supt. May. His special area of responsibility was Intelligence Investigation. He had considerable knowledge with respect to the overall security issue. His role in the Command Centre was a second responsibility he carried on the day of the leaders' meeting. He said the RCMP did not have an advance plan to address the possibility of protesters blocking the road on the way out. He said it would have been Supt. Thompsett's responsibility to go down there and deal with any such situation.

- Supt. May indicated that if all three exits were blocked, resources would be available to deal with the situation, including route security, mobile responses, the Quick Response Teams, the Tactical Troops and other site security personnel assigned to that location. But as to whether there was a specific plan in place to deal with potential blockades, Supt. May, who was head of security planning, testified that he was aware of no such plan.

- S/Sgt. Stewart thought that Insp. Edwards' draft operational plan for protests and demonstrations may have addressed this issue but he saw neither it nor any other plan specifically addressing road blockades. He acknowledged that, if no contingency plan existed to deal with the possibility that the students might congregate on the exit routes, that would be a gap in RCMP planning.

According to expert evidence called at the hearing, a plan addressing potential blockades should have been in place. Insp. Ryan of the Toronto Police Service held responsibility for both crowds and disaster events in Toronto, and has had an extensive career in crowd control and demonstrations at large public events in Toronto. He said that, when plans are made for major events involving visiting world leaders, the police expect that demonstrators will make an effort at some point to block exit from the functions. Planning documents should address such eventualities. Specifically, he agreed that plans should have been made for the possibility of the blockade at Gate 6.

C/Supt. Milton holds responsibility for the personal protection of VIPs and International Protected Persons visiting the UK. He viewed the routes in and out of the UBC campus and told the hearing:

> The exit routes should never have been -- never be blocked in any location like this. It's of paramount importance that if you are running a protection operation that you always have a method of getting out of that location.

C/Insp. Caldwell has had extensive experience in practice and as a trainer in public order policy matters. He is the London police force's chief tactical advisor on public order events and is responsible for strategic training for all senior officers in public order and major incident management. He testified that in planning for such an event a major focus would be on securing entrances and exits early on and ensuring that they remain secure at all costs:

> Gain the -- gain the ground right from the outset and hold that ground throughout the whole -- whole time of the event by producing a policing plan which was robust enough to ensure that those gates were never lost.

With specific reference to the entrances and exits at UBC, Chief Insp. Caldwell said that pre-event planning should provide for sufficient resources to keep the gates open.

A plan that would have enabled the RCMP to maintain the access routes open for the duration of the event - rendering the removal of blockades unnecessary - should have been in place. In fact, no tactical plan existed to enable the RCMP to maintain the exits in a secure and open state throughout the daylight hours of November 25.

12.4.5. *Confusion at the Gates*

I now turn to a consideration of what occurred between 3:00 p.m. and 4:00 p.m. A study of all of the evidence by officers in the Command Centre and by those out in the field can only lead to the conclusion that the blockade of the three exits created considerable confusion. This confusion put the officers responsible for ensuring the safety of the leaders in a state of great anxiety as they wrestled with the challenge facing them.

In reference to the blockade and the demonstrations near the flagpole earlier in the day, Deputy Chief McGuinness testified about the joint command operation making the best out of the "chaos" that was occurring. He testified about mix-ups that occurred in the course of communicating messages from Command Centre to those in the field and said that, with all that was going on, many of the communications coming into and going out of the Command Centre would have been "missed."

Insp. William Ard, who had taken responsibility for organizing and establishing the Command Centre, had volunteered to assist in the Command Centre that afternoon. When the roads became blocked and personnel had to be located to open a gate, he said that the urgency of the situation took over and protocol was not followed. He agreed that, given the shortness of time before the motorcades were to depart, there was a scramble for resources within the "breakout room" of the Command Centre.

Deputy Chief McGuinness explained one of a number of communications gaps that occurred during this hour:

> Well, . . . we're talking minutes here, and seconds. And the point is, is that in the best laid plans, when you're – when you're following a plan, it's ideal if everything can fall into place one after another. But when you're met with different circumstances that are coming up very quickly, sometimes the best laid plans oft go astray, and this is the case here.

While I cannot disagree with the wisdom of those comments, the fact of the matter is that there simply was no plan in place to address a blockade of the exits. There was no plan to go astray. This, more than anything else, is the explanation for the events that unfolded between 3:00 and 4:00 that afternoon.

Discussions about what should be done were taking place between the officers out in the field near the Chancellor Boulevard exit (Gate 3). Similar discussions were taking place at Command Centre where Deputy Chief McGuinness and Supt. Casey were in command. Officers within Command Centre briefly considered using helicopters to remove the dignitaries from the site but dismissed the idea as being too dangerous.

S/Sgt. Stewart was called to the May/Dingwall/Thompsett discussions in the field a number of times to answer questions and give advice. Soon after 3:00 p.m., S/Sgt. Stewart directed Sgt. McLaren to call two reserve Quick Response Teams from the Seaforth Armouries to come to UBC.

Supt. Thompsett, recognizing his responsibilities as Site Commander, telephoned Insp. Killaly who had arrived at Gate 6 and had taken charge at that location under his instructions. Insp. Killaly told Supt. Thompsett that there were 25 to 30 passive protesters at the gate. Supt. Thompsett asked him whether, if two or three Quick Response Teams were sent down with a couple of dog teams, the intersection could be cleared. Supt. Thompsett said Insp. Killaly's response was: "consider it done." Insp. Killaly's evidence of what occurred is consistent with that of Supt. Thompsett. I accept Supt. Thompsett's evidence that, immediately following his conversation with Insp. Killaly, he was about to secure those resources and set the clearance process in motion. It was then approximately 3:10 p.m.

12.4.6. A Change in Command

While Supt. Thompsett had been on the telephone to Insp. Killaly, Supts. May and Dingwall were in touch with Command Centre. They had learned that, shortly after 3:00 p.m., a decision had been made at Command Centre to take over command from Supt. Thompsett. Decisions as to how the leaders' exit would be secured would be made at

Command Centre, presumably by Deputy Chief McGuinness and Supt. Casey who, at that time, shared responsibility at the top. A major factor in arriving at this decision was the Command Centre's ability to monitor the events on campus through a Westcam feed coming from an aerial camera. Insp. Moulton explained that other reasons included the availability of information coming from intelligence and Command Centre's control over available resources and ability to re-deploy those resources where required. Supt. Thompsett said it was either Supt. May or Insp. Dingwall who advised him of Command Centre's decision to take charge and that he abided by that decision.

12.4.7. Clearing Gate 6

The decision to clear Gate 6 was made at about 3:15 p.m. Both Deputy Chief McGuinness and Supt. Casey were part of that decision-making process. At that point, Command Centre was not aware of the impending availability of the Quick Response Teams from the Seaforth Armouries. Insp. Moulton said that it was the understanding in Command Centre that the Quick Response Teams were virtually all deployed at the site of the security breach that had occurred earlier at the flagpole and that it would be necessary to use other resources to open Gate 6. Insp. Moulton said that Command Centre did not see the two Crowd Control Units, one from Vancouver and the other from Ottawa, as available options at that time. They were to be used as a last resort.

Sometime between 3:20 and 3:25, Deputy Chief McGuinness and Supt. Casey decided how the exit would be cleared. Two buses were to be sent immediately to gather up and bring officers to Gate 6 to open it. One bus would bring personnel who had recently gone off shift and were then at the Heather St. Barracks. The other bus would gather up personnel along the planned motorcade route out of Chancellor Boulevard and into downtown Vancouver. Because of the re-routing through Gate 6, their services would no longer be required on the streets of Vancouver. Clearly, the hope was that these buses would arrive at Gate 6 as soon as possible. It was anticipated that about 100 officers would be available and, on their arrival, they would encourage the protesters to voluntarily open the route. If that failed, the officers would physically remove any remaining protesters by carrying them off the road.

12.4.8. Misdirection to the Crowd Control Unit

Meanwhile, it was decided at Command Centre that, to be in a position to clear the crowds at the two other locations if that should become necessary, the VPD Crowd Control Unit would be dispatched to Gate 3 in "level one" dress. It was thought that the arrival of the unit would be seen as an indication that an exit out of Chancellor Boulevard remained a likely option. They would also be available to help clear the Marine Drive/Newton Wynd exit if the need arose.

Somehow, the instructions that Deputy Chief McGuinness said were to be relayed by one of the duty officers were incorrectly transmitted to Insp. Doern. He was never in fact instructed to go to Gate 3, but he was instructed to deploy in "level two" attire. It was not possible to ascertain where communications broke down. It was Insp. Edwards who gave the instructions to Insp. Doern, but Insp. Edwards did not recall the details of what he was requested to pass on. In any event, Insp. Doern said that he received clear instructions to deploy his unit in "level two" dress - hard hats, batons, etc., and I am satisfied that that is the information he was given.

At 3:20 p.m., the VPD Crowd Control Unit, in "level two" dress, was outside the Rose Garden alongside the National Capital Region Tactical Team, similarly dressed. At 3:40 p.m., Cpl. Randy Wong at Command Centre spoke to Insp. Doern by telephone and instructed him to take his unit double time to Gate 4 (across Marine Drive from the museum at the intersection of West Mall). Insp. Doern wondered about those instructions as there had been no indication of difficulties at Gate 4. No instructions were ever given to Insp. Doern to either deploy his unit in "level one" attire or to go to Gate 3 although that is where he had expected to be assigned and it was there that Command Centre intended Insp. Doern and the VPD Crowd Control Unit to be assigned, in "level one" attire.

Gate 4 was close to where the unit was located when Insp. Doern received his latest instructions. On his arrival there, nobody was in sight but Supt. May soon arrived and said that the blockade to be cleared was at Gate 6 and that the 70 Crowd Control personnel were to proceed there immediately - a distance of about one mile. With 54 pounds of equipment attached to each member, the Crowd Control Unit quickly ran the mile to Gate 6. However, just before they got there, Supt. Thompsett, on instructions he had just received from Supt. Casey, arrived by vehicle alongside Insp. Doern. He told Insp. Doern that Gate 6 had now been cleared and that his unit should get out of sight as the motorcades were about to go through.

The unit moved off to an adjoining parking lot and instructions were soon received to change to "level one" dress and be ready for deployment elsewhere in Vancouver. No explanation for all of this confusion was provided at the hearing.

12.4.9. Departure Time Nears

Meanwhile, other developments unknown to either Deputy Chief McGuinness or Supt. Casey were taking place. The scheduled departure time for the motorcades was 3:55 p.m. While that was the time printed in a schedule distributed to senior personnel, there were suggestions that 4:00 p.m. was a more likely time. Supt. May thought that the latter time was reliable. In any event, it was generally understood that departures were to commence between 3:55 p.m. and 4:00 p.m. There were no assurances as to when the busloads of personnel would arrive. Deputy Chief McGuinness acknowledged that, if they did not arrive prior to the posted departure time, the contingency would be to stack the motorcades at the museum until the exit route had been opened. That is where things stood at 3:40 p.m.

At or about that time, Insp. Dingwall, who was still at the Chancellor Boulevard (Gate 3) location, telephoned to Command Centre. Insp. Ard received the call. The Quick Response Teams had arrived near Gate 3 from Seaforth Armouries and Insp. Dingwall reported that S/Sgt. Stewart had 30 officers in three vans, who could proceed to Gate 6 to clear the road if that is what Command Centre wanted. Insp. Ard recalled that this news was "like a gift from heaven." He shouted to the rest of the group at the Command Centre: "Is it confirmed we're going to use Gate 6?" Someone confirmed that this was the plan so he told Insp. Dingwall to send S/Sgt. Stewart to clear Gate 6.

Insp. Moulton relayed the message, through S/Sgt. Brian Papp at the Quick Response Team desk at Command Centre, as well as to the motorcades and route people, that S/Sgt. Stewart and the Quick Response Teams were to be used to clear Gate 6.

It was not made clear just who Insp. Ard was in communication with immediately prior to passing the instructions to Insp. Dingwall. Overall Commanders McGuinness and Casey were not involved because the first indication they had that S/Sgt. Stewart was available to assist was when they saw him arrive with his officers at Gate 6, on the Westcam video. That says a great deal about the air of uncertainty prevailing at that very crucial time. Neither Deputy Chief McGuinness nor Supt. Casey were critical of Insp. Ard's direction to Insp. Dingwall to dispatch S/Sgt. Stewart to clear Gate 6. Deputy Chief McGuinness called this a good deployment of available resources. He said that as he saw the Quick Response Teams arrive, he expected that the demonstrators would be physically removed from the road. Supt. Casey said that the means by which that would be done would be a matter for decision by those present on the ground.

Insp. Moulton said it was about 3:45 p.m. when he spoke to Officer Papp and told him to tell S/Sgt. Stewart that he had five to six minutes to clear the intersection. Insp. Moulton believed that the road should be cleared 10 minutes before the actual motorcade departure.

It was from Insp. Dingwall, however, that S/Sgt. Stewart took his instructions and those instructions had come at about 3:41 p.m., as a result of the conversation moments earlier between Insps. Ard and Dingwall. Insp. Dingwall said that he told S/Sgt. Stewart that there was not a lot of time to act as the motorcades were scheduled to leave between 3:55 and 4:00 p.m. He told S/Sgt. Stewart to pull away in the vans slowly so that people would not notice him leaving Gate 3.

S/Sgt. Stewart was clear and definite about the instructions he had received from Insp. Dingwall. I believe him and I accept the truth of what he said about the detail of those instructions. I am also of the view that Insp. Dingwall communicated to S/Sgt. Stewart what he believed his instructions to be from Insp. Ard.

S/Sgt. Stewart had been under the assumption that 4 p.m. was the time by which Gate 6 needed to be cleared but just before he left Gate 3, Insp. Dingwall told him the job needed to be done by 3:50. By his watch, he had six minutes left, and he was still two minutes away from Gate 6.

He spoke to his officers and told them to follow to Gate 6 in cavalcade. There were two vans and two dog vehicles. They drove, at the speed limit or slightly below, to an area east of the blockade at the Gate, parked on the south side of the road, facing oncoming traffic, and got out of the vehicles.

On his arrival, S/Sgt. Stewart understood that he had something less than five minutes to clear the road in order to comply with his instructions. He had a very short discussion with the officers, reminding them what they were going to do: that they were going to line up and march forward. He moved the barricade to get by it, directed other officers to move the barricades off the roadway and gave his order to the protesters.

Sgt. McLaren said that, as he drove with S/Sgt. Stewart to Gate 6, S/Sgt. Stewart told him that they had four minutes to clear the Gate. Sgt. McLaren understood S/Sgt. Stewart to mean that the road absolutely, positively had to be cleared in that time period. I believe Sgt. McLaren when he says that that is what S/Sgt. Stewart told him and I believe that that is what S/Sgt. Stewart understood his instructions to be.

What occurred at Gate 6 following S/Sgt. Stewart's arrival will be considered in Chapter 28.

12.5. Involvement of the Local RCMP Detachments

12.5.1. UBC Detachment

Policing services for UBC campus are provided out of the RCMP's UBC Detachment. Yet until September 15, 1997, when S/Sgt. Lloyd Plante arrived as NCO in charge of the detachment, the detachment had not had any involvement in the extensive planning that had been going on for the APEC leaders' meeting that would take place on campus on November 25.

Upon assuming command, S/Sgt. Plante discovered that the detachment had no direct representation in the planning process and he was concerned that the detachment lacked an understanding of what planning had taken place. He learned that there had been discussions between senior planners and UBC but that the detachment had not been involved. He said that, had he been at the detachment when planning began for the leaders' meeting, he would have had direct representation in the planning process and that there would have been a benefit in having a member from the detachment involved in the Site Command.

As November 25 was just two months away when S/Sgt. Plante arrived at the detachment, he set about making some changes. He contacted Site Commander Thompsett and assigned Cpl. Tracy Duffield to represent the detachment in planning processes that could affect the detachment's resources and the way it would deal with situations that arose. From that point onward, the detachment was represented at meetings of the Intelligence and Investigation Group. Cpl. Duffield met with the events coordinator at UBC, with the Site Commander and his assistant and others involved in the APEC events.

Cpl. Tracy Duffield, with the assistance of S/Sgt. Plante, drew up an APEC Operational Plan. It provided that the detachment would be responsible for pre-APEC security and demonstrations up to Friday November 21, 1997. Until the "red zone" was secured, members from UBC detachment would be first responders to any incidents. Once the "red zone" was in place, demonstrations would be handled by members assigned to the APEC security force. Members from UBC detachment were not to enter the "red zone" unless called upon.

The "red zone" was the secure zone behind the security fence. S/Sgt. Plante explained that, up to the date of the installation of the fence, the UBC detachment was responsible for providing general policing services to the entire UBC community, even though many activities requiring RCMP involvement were specifically focused towards APEC. Once the secure area was established by the erection of the fence, the area within it became the responsibility of the Site Commander, with the detachment retaining responsibility for incidents outside the secure zone. On November 25 itself, any activities in the vicinity of the site that were related to APEC events would be the responsibility of the Site Commander. For example, even though the noon rally was outside the secure zone, since it was specifically directed at the APEC leaders' meeting, it was entirely the responsibility of the Site Commander.

S/Sgt. Plante kept Supt. Thompsett advised of occurrences that he thought should come to his attention. For example, S/Sgt. Plante told Supt. Thompsett about the November 7 incident that ultimately led to the November 24 arrest of protestor Jaggi Singh. He also told Supt. Thompsett that a Report to Crown Counsel on that incident had been submitted and, subsequently, that charges had been approved by the Crown and that a warrant was issued or would soon issue for Mr. Singh's arrest.

Supt. Thompsett made it clear that S/Sgt. Plante was in touch with him in such instances to keep him up to speed, and not to obtain his input. Such decisions were seen by both of them as being the responsibility of S/Sgt. Plante.

All of S/Sgt. Plante's and Cpl. Duffield's communications were with Supt. Thompsett or his assistant. Supt. May and Insp. Dingwall were not on S/Sgt. Plante's list for notification and Supt. Thompsett said that he did not discuss the information about Mr. Singh's arrest with either of them.

With reference to the Singh matter, S/Sgt. Plante made a number of significant decisions. It was his decision to recommend to Crown Counsel that an assault charge be laid against Mr. Singh, that a warrant for his arrest issue, and that his release from custody be on the condition that he not attend at UBC. He also instructed officers as to how and where Mr. Singh should be arrested.

Because these decisions seemed so relevant to what had been occurring on campus in the days and weeks leading up to November 25, a question arises as to what linkage there may have been between the detachment and all of the planning and intelligence gathering that had gone into the APEC event, particularly as relates to Mr. Singh who was either the leader of, or one of the few leaders of, the anti-APEC demonstrators. As the following would indicate, that linkage - if it existed - was weak indeed.

S/Sgt. Plante said that the Singh investigation involving the November 7 incident was basically left to him. Asked about his decision to seek the arrest of Mr. Singh, he said he did not know exactly what reaction to expect from Mr. Singh's arrest. He said:

> I wanted to try and eliminate as much of the risk of a confrontation as I could. I weighed the fact, frankly, that any arrest of Mr. Singh could promote some sort of confrontation. I recognized that, and it was an issue that, frankly, weighed very heavily and in the process that we had to follow. It was a very real concern of mine.

I pressed in the following way for further clarification:

THE COMMISSIONER: In making that kind of a decision, I gather you were on your own, and what interests me is, what contact did you have with all of the security planning that went into APEC with May being on staff for 18 months or something, and Dingwall and Thompsett, who were in the middle of this for a long, long period of time. What--where did you fit into all of that and what was going on with respect to Singh and the arrest and so on, as part of the overall security planning for APEC, if there was any contact?

THE WITNESS: There was--frankly, the Singh investigation was basically left to myself. What I --what I tried to rely on was information that we received from the Threat Assessment people. I spoke to, you know, officers that had direct contact with APEC Alert, and with--you know, had infiltrated the group, and I was trying to reach that balance myself based on information that I was able to find out,

THE COMMISSIONER: Was the Singh investigation left to you by design, by order? How did that occur? Or just because you were head of that detachment?

THE WITNESS: Basically, because I was--I shouldn't say basically. Because I was head of the detachment.

THE COMMISSIONER: Well, was there any--any decision made that that's where that should be dealt with, rather than in the overall APEC security package?

THE WITNESS: No, part of the planning process that I've previously discussed. It was clear to me that my responsibilities relating to criminal acts or civil disobedience that occurred prior to the fence being constructed was clearly the responsibility of University Detachment, myself. So I--I fully accepted the responsibility for that particular issue.

Details of what occurred at the time of the alleged assault on November 7 and of Mr. Singh's arrest and release will be considered in Chapter 17.

That the right hand did not know what the left hand was doing was certainly apparent when the Tibetan flag was removed from the flagpole on the roof of the Graduate Student Society Building, inside the secure zone, as will be discussed in Chapter 20. The initiative to remove the flag was taken by S/Sgt. Plante, who by his own admission was without authority in the secure zone at that time. He was also quite unaware that Site Commander Thompsett had made a deal that would allow the flag to remain in place throughout the day. Once again, the weakness of the linkage between elements of the policing structure leading up to and including November 25 was quite apparent.

The consequences of failing to include the UBC Detachment in the policing aspect of the APEC planning structure in a meaningful way right from the start, rather than leaving it to the new officer in charge to take the initiative to become involved just two months before the event, was in my opinion a significant factor leading to the complaints that arose under categories 5 and 9.

12.5.2. Richmond Detachment

When morning broke on November 25, Richmond Detachment personnel had no knowledge or expectation of what the day might hold for their facility. By afternoon they would be swamped by the unplanned arrival of 40 prisoners from UBC campus.

In fact, two planning documents prepared in the lead-up to the APEC conference had referred to the need to plan for handling prisoners at the Richmond Detachment. Neither plan was ever forwarded to the detachment.

The Acting Officer in Command at the Richmond Detachment, Insp. Allan Speevak, testified that they had never been notified to expect any prisoners from APEC. Asked when it was that he first learned that prisoners would be arriving, he said the first formal notice he had was about 1:54 p.m. when Insp. Ard called to say they should expect 12 prisoners from UBC. In fact, the prisoners had already started to arrive at the cell block located on a level below Insp. Speevak's office.

This lapse in communication was in spite of the fact that a Prisoner Handling Operational Plan had been prepared more than a month earlier.

As head of prisoner handling for the APEC conference, Cpl. James Harrison was assigned to complete such a plan. It was completed on October 23. Attached to the Prisoner Handling Operational Plan was an Appendix titled "Cell Accommodations/Capacities/ Procedures". Cell block locations identified included the Richmond Detachment which was listed as having a capacity of 40 total: 16 bunks, 4 adult cells, 2 youth cells, 2 adult female cells, and "drunk tank." Cpl. Harrison had obtained that information from the Richmond Detachment for inclusion in his Operational Plan. As he was required to do, he submitted the plan to the Security Steering Committee for APEC. He said the plan was approved by the Committee. He did not forward it to the Richmond Detachment nor did he alert the detachment to the possible need for its cells on November 25. He said he expected that, upon approval, APEC Command would circulate the Prisoner Handling Operational Plan. The plan was never circulated, nor was it mentioned to the Richmond Detachment.

The November 22 operational plan drafted by Insp. Edwards for protests and demonstrations referred to the fact that, beyond the cell accommodation for approximately 10 prisoners at the UBC Detachment, "further prisoner processing and detention will be at the RCMP Richmond Detachment." That plan never got beyond the draft stage and was not circulated.

As it turned out, it was a very busy day at the Richmond Detachment, as a result of prisoners transferred from UBC. Deputy Sheriff Kendall Howard, who had worked in the Richmond building for eight years, said he had never before seen numbers like it in the cell block. He said he saw the staff being potentially overwhelmed by the numbers coming in and he offered his assistance.

Cpl. Harrison, in his final report on November 27 as the Prisoner Handling Coordinator of the APEC Operational Support Group, described what went on at Richmond as a "nightmare."

What occurred at the Richmond Detachment during the afternoon and evening of November 25 as a result of the transfer of 40 prisoners from UBC will be reviewed in Chapter 29.

13. COMPLAINT CATEGORY 1: SECURITY PERIMETER, DEMONSTRATION AREA & NOISE FREE ZONE

These complaints allege that the RCMP provided demonstration sites too small for the number of protesters and created security zones that were larger than necessary for security purposes so that APEC delegates would be shielded from the sights and sounds of protest.

13.1. Issues

The central issues arising out of these complaints are:

1. Whether, in order to accommodate government concerns unrelated to security, the RCMP did any of the following:
   - (a) enlarged the security/event perimeter;
   - (b) decreased the size of the demonstration area; or
   - (c) created the noise free zone; and
2. If so, whether doing so was inappropriate in the circumstances or inconsistent with the *Charter*.

13.2. Security/Event Perimeter

There is no doubt that the RCMP were solely responsible for establishing the security perimeter. There is conflicting evidence, however, as to whether that perimeter was determined by reference, at least in part, to non-security concerns.

13.2.1. An Accommodation may be Needed

Chief Supt. French testified to the effect that, although the police will generally be concerned only with the security of an event, and not its "tranquillity," there may have to be an accommodation between security concerns and the concerns of the event participants. His evidence supports the proposition that the police may enlarge a security perimeter for non-security reasons to the extent necessary to ensure that the venue remains suitable for the purpose of the event. This is a sound approach. In hosting an event such as the APEC leaders' meeting, the federal government may, depending on the circumstances, ask that the security perimeter be enlarged for non-security reasons to the extent necessary to ensure that the participants are able to conduct their business effectively, provided the request will have no negative impact on the RCMP's security operation. This is consistent with the decision in *Campbell* (discussed in Chapter 10).

Supt. May and Insp. Dingwall made it clear that they would have been willing to enlarge the perimeter if the federal government so required. Mr. Vanderloo believed that ACCO did have the authority to so require and suggested that the perimeter was in fact extended beyond what the RCMP required for security purposes, to meet the desire by ACCO and the Prime Minister's Office for a "retreat-like" setting.

In contrast, Supt. May testified that, although the boundaries may have been based upon both security and non-security factors, the "security perimeter" and "event perimeter" ultimately coincided. In other words, what was necessary from a security perspective was sufficient to satisfy the desire of the Prime Minister's Office for a "retreat."

13.2.2. Perimeter was No Larger than Necessary

In my view, there is no compelling evidence that the security perimeter, as shown on revised Schedule A to the Licence Agreement, was larger than necessary for security purposes. Indeed, Complainants' counsel conceded that the extent of the enlargement that they allege occurred is "impossible to state with precision."

I have decided that it is not possible, on the evidence before me, to conclude that the perimeter was enlarged for non-security reasons. On this issue, I accept Supt. May's evidence. Supt. May was an RCMP member responsible for, and at the centre of, the making of security decisions. He was better positioned than Mr. Vanderloo to know the RCMP rationale for establishing the security/event perimeter. I accept that, although non-security factors may well have been raised with the RCMP by the federal government, the security/event perimeter was no larger than the RCMP deemed necessary to satisfy security concerns.

As I am not satisfied that the security/event perimeter was enlarged for non-security reasons, I can only conclude that the RCMP conduct in establishing the perimeter was neither inappropriate nor inconsistent with the *Charter*.

13.3. Demonstration Area

13.3.1. Mr. Carle's Demands

Mr. Carle wished to create a "retreat-like" atmosphere for the leaders' meeting. He vehemently opposed the location of the Thompsett/Pavlich line which, in accordance with the Licence Agreement, was established by UBC and the RCMP to meet both the RCMP's security concerns and UBC's concern that the protesters be able to see, and be seen by, the APEC leaders. I am satisfied that Mr. Carle demanded that the size of the "demonstration area" be reduced in order to accomplish his own agenda and I reject his explanation that the reduction was necessary to ensure the safety of the protesters.

13.3.2. Change to the Fence Line

After UBC expressed its disapproval of Mr. Carle's demands, President Piper and Mr. Pelletier ultimately reached a compromise. Nevertheless, Supt. Thompsett and Mr. Brown each took it upon himself to move the location of the fence closer to the Thompsett/Pavlich line. In the result, despite Mr. Carle's efforts, the law school fence ended up just nine feet closer to the building than the Thompsett/Pavlich line, and not at the 41-foot mark that Mr. Carle had tried to achieve. The nine foot adjustment was a minimal change indeed given the already considerable distance between the demonstration area and the road where the motorcades were to pass.

Although he was put in a difficult position by Mr. Carle's authoritarian approach to the issue, and although UBC did agree to reduce the size of the protest area, Supt. Thompsett sought to honour the prior agreement with UBC and, in so doing, he acted to the benefit of protesters.

At the end of the day of course, Mr. Carle did not get his way.

13.3.3. Negligible Impact on Protesters' Rights

The movement of the fence from the Thompsett/Pavlich line was inconsistent with respect for the *Charter* because it limited the protesters' rights for reasons unrelated to security or to the need to allow for the successful conduct of the meeting and may have increased the security risk. Having said that, it is also clear that despite Mr. Carle's wishes, and despite the compromise between the federal government and UBC, Supt. Thompsett took steps to minimize the effect of the fence relocation. In the circumstances, the interference with the protesters' rights was negligible and the maxim *de minimis non curat lex* applies - the law does not concern itself with trivial matters.

RCMP conduct in respect of the demonstration area was neither inappropriate nor inconsistent with respect for the *Charter*.

13.3.4. Government Interference

Had UBC and the RCMP passively accepted Mr. Carle's proposed fence location, that fence would have been located 43 feet closer to the law school building than was necessary to meet security concerns.

Mr. Carle's proposed fence location may well have been inconsistent with the *Charter*. The presence of protesters at the Thompsett/Pavlich line clearly would not have prevented the APEC leaders from successfully conducting their meeting, nor would it have been a security risk. In fact, by frustrating the protesters further, an unworkably small demonstration area might have increased the security challenges the RCMP had to meet that day. What Supt. Thompsett understood and Mr. Carle did not, was that giving protesters the maximum possible opportunity to protest safely would minimize the risk of an adverse reaction from them.

In this case, had President Piper not written to the Prime Minister, and had Supt. Thompsett and Mr. Brown not separately intervened to close the gap between the fence line they judged to be acceptable and the one chosen by Mr. Carle, the protesters would have been confined to a very small area indeed as a result of federal government interference, through the Prime Minister's Office, in an RCMP security operation.

But for others coming to the rescue, Mr. Carle's actions would have had the same level of success, to the detriment of the protesters, that resulted from the improper interference in RCMP security operations at the Museum of Anthropology in the days leading up to the leaders' meeting.

13.4. Noise Free Zone

13.4.1. Protest Rights on Private Property

This issue may be dealt with relatively easily, as the "noise free zone" was located on private property and the owner, UBC, expressly agreed to its creation. In the Supreme Court of Canada's decision in the *Commonwealth* case (see Chapter 7), McLachlin J. wrote, with respect to the interplay between freedom of expression and private property:

> Freedom of expression does not, historically, imply freedom to express oneself wherever one pleases. Freedom of expression does not automatically comport freedom of forum. For example, it has not historically conferred a right to use another's private property as a forum for expression. A proprietor has had the right to determine who uses his or her property and for what purpose. Moreover, the Charter does not extend to private actions. It is therefore clear that s. 2(b) confers no right to use private property as a forum for expression.

The only qualification I would add to this passage is that section 2(b) of the *Charter* undoubtedly *will* apply on private property if the owner agrees to the use of the property for the purpose of protest and that was generally the case here. In fact, UBC tried to limit any restrictions on protest activities on campus, as was made clear by section 6.3 of the Licence Agreement:

> 6.3 The parties undertake not to impede any lawful protest and the exercise of free speech outside the Properties and other designated areas, as determined by the RCMP in conjunction with UBC.

The "noise-free zone" was located on private property, outside the secure zone. No argument was made before me as to whether UBC is subject to the *Charter* or whether, by agreeing to the restriction on the use of megaphones on its property, UBC contravened the *Charter*. However, the law is relatively clear that although universities can, in appropriate circumstances, qualify as part of "government" for *Charter* purposes, the general rule is that universities "do not form part of the government apparatus" (see *McKinney v. University of Guelph,* [1990] 3 S.C.R. 229; *Harrison v. University of British Columbia,* [1990] 3 S.C.R. 451).

UBC apparently accepted Mr. Carle's concerns regarding noise as valid. The only police participation was, through Insp. Dingwall, to propose the "noise-free zone." This became the solution, acceptable to everyone as it turned out, to Mr. Carle's initial position that the security fence be moved back to limit potential noise. UBC effectively agreed to the creation of the "noise-free zone" as a "designated area" for the purposes of section 6.3 of the Licence Agreement. Therefore, the protesters simply had no *Charter* right to use megaphones in that area.

13.4.2. Little Impact on Protests

There was no evidence that the prohibition on the use of megaphones in the "noise-free zone" was enforced. If the RCMP did in fact enforce the prohibition, they acted in accordance with restrictions agreed to by UBC as a private property owner. Therefore, I cannot possibly conclude that the RCMP conduct was inconsistent with the *Charter* or inappropriate to the circumstances.

As I am satisfied that the RCMP did not act inappropriately, or inconsistently with the *Charter*, there is no need to consider the efforts of the federal government in this regard. It simply extracted a concession from UBC, as private property owner, which was intended to ensure that the leaders' meeting would not be disrupted by noise. Although the "noise-free zone" may have resulted from Mr. Carle's desire to create a "retreat-like" atmosphere, it had little, if any, effect on protest activities on November 25.

14. COMPLAINT CATEGORY 2: SINGH PHOTO AT ACCO OFFICE

Part of Mr. Singh's complaint is that his photo was posted in the ACCO offices prior to the APEC conference. He said he found this to be intimidating.

Mr. Singh actively and vocally opposed the APEC conference. His activities, mainly associated with APEC Alert, extended over several months leading up to the November event. He was known to those responsible for conference planning and in the weeks just before the event had been involved in confrontational, but non-violent, interactions with police and campus security personnel. (His involvement on campus November 7-24, and the operations of APEC Alert, are discussed in Chapter 17)

Cst. Joanne Boyle was the VPD representative on the Threat Assessment Group involved with the APEC conference. Because she believed that Mr. Singh would be one of the main agitators during the conference, she obtained a photograph of him from VPD records. She said her purpose was:

> Just to be able to readily identify him or show his photo to any members that might be at any of the sites that would have dealings with him during APEC that wouldn't otherwise be familiar with him.

Cst. Boyle had seen Mr. Singh a few times "loitering" outside 1125 Howe Street where ACCO and the joint RCMP/VPD planning offices were located. Insp. Murray Day of the VPD acquired a copy of the photo and instructed that it be posted at the reception desks and in private areas of the ACCO office. Insp. Day was familiar with Mr. Singh's activities. He said he found Mr. Singh to be polite in his conversations with him, but that he was an "in your face kind of demonstrator – very vocal."

Mr. Singh went to the ACCO office at 1125 Howe Street on November 21 because he had been told that his photo was posted there. He saw the picture posted inside the hutch sitting atop the reception desk. A sheet of paper listing such information as his age, height, weight and hair colour accompanied the colour photograph. He acknowledged that they appeared to be posted for use by the person sitting at the reception desk. Believing that the posting of his photograph was totally inappropriate and, there being no one else present, he removed it and the information sheet and put them in his pocket.

As he prepared to leave, Insp. Day and an RCMP member approached him. They searched Mr. Singh's bag and, after some conversation, told him to leave. He protested that he had a right to be in the building but left without incident. He did not tell the officers that he had removed the items and had them in his possession.

Mr. Singh acknowledged at the hearing that the photo originated with the VPD. He correctly presumed that the VPD had provided it to ACCO. There is no evidence whatsoever that RCMP members had anything to do with the posting of the photograph. This aspect of Mr. Singh's complaint does not concern the RCMP and therefore does not require further consideration.

15. COMPLAINT CATEGORY 3: UNDERTAKINGS

On November 22 and 23, six protesters were arrested after refusing to leave their tents near the Museum of Anthropology. The area had become part of the security zone. Besides the arrests themselves, issue is taken with the undertakings that the arrested protesters were obliged to sign before they could be released. Those undertakings placed restrictions on the protesters' activities for the duration of the APEC conference.

15.1. The RCMP Plan

In the spring of 1997, Cpl. James Harrison of the RCMP was assigned the role of Head of Prisoner Handling for the APEC conference. His regular duties at the time were as a Watch Commander at the Mission Detachment. He testified that his instructions came "directly from Insp. Forsythe who was the Officer in Charge of the Ops Support Group, the planning group which I was attached to." Asked what instructions he had received with respect to the Prison Handling Operational Plan, he said:

> My frame of reference was, please develop a plan for handling of prisoners that are taken at APEC, period. There were no other frames of reference, points of reference, or suggestions made to me as to how it should be done. It was prepare an Ops Plan, and submit it to us, and we'll review it and once--once a plan is--is developed and approved, that will be what you will put into operation.

Cpl. Harrison said he made every effort to find plans and documentation prepared for events that had been held in the past at UBC, such as the Yeltsin-Clinton summit. His search extended to the federal archives in Burnaby, but nowhere could he find any records to assist in his preparations. He said his search was not only for "undertaking" forms to be signed by accused persons before their release, but for a broad range of documentation:

> It was the whole issue of prisoner handling, everything from contacts, arranging transport, arranging cells, all of that. And none of that information is available, and--which meant that I had to start from square one to rebuild the entire Operational Plan. The undertaking to appear was simply just one part of that overall situation.

With limited background and no research assistance, Cpl. Harrison moved forward with his assigned task and prepared the Operational Plan, a three page document covering duties and responsibilities; reporting procedures; shifts and hours of work;

communications; equipment; and travel and accommodations. It also contained five appendices:

1. Interjurisdictional Protocols For Prisoner Handling
2. Cell Accommodations/Capacities & Procedures
3. Prisoner Transport/Responsibilities & Equipment
4. Conditions for Undertakings Before Justice Of The Peace
5. VPD Mass Arrest Procedures (Riots or Unlawful Gatherings)

A relevant clause in the Plan, under the heading "Duties and Responsibilities" reads:

> The unit is responsible for ensuring that any prisoner released prior to Court be released before a Justice of the Peace with appropriate conditions to limit their access to any of the Conference venues or dignitaries.

15.2. The Conditions: Original Undertaking Form

Appendix 4 to the Operational Plan reads:

> PRISONER HANDLING
>
> CONDITIONS FOR UNDERTAKINGS BEFORE A JUSTICE OF THE PEACE
>
> 1. I WILL NOT ATTEND WITHIN 100 METRES OF ANY VENUE OR SITE WHERE OFFICIALS OF FOREIGN GOVERNMENTS PARTICIPATING IN THE ASIA PACIFIC ECONOMIC COOPERATION MAY BE IN ATTENDANCE BETWEEN THE DATES, NOVEMBER 18TH, 1997 AND NOVEMBER 26TH, 1997, NAMELY:
>
>   THE VANCOUVER TRADE AND CONVENTION CENTRE
>
>   THE UNIVERSITY OF B.C. MUSEUM OF ANTHROPOLOGY MACKENZIE HOUSE UBC, 6565 NW MARINE DRIVE, VANCOUVER
>
>   THE VANCOUVER INTERNATIONAL AIRPORT
>
>   B.C. PLACE STADIUM
>
>   THE PAN PACIFIC HOTEL, VANCOUVER
>
>   THE FOUR SEASONS HOTEL, VANCOUVER

THE HOTEL VANCOUVER

THE HYATT REGENCY HOTEL, VANCOUVER

THE METROPOLITAN HOTEL, VANCOUVER

THE RENAISSANCE VANCOUVER HOTEL

THE SHERATON WALL CENTRE, VANCOUVER

THE SUTTON PLACE HOTEL, VANCOUVER

THE WEDGEWOOD HOTEL, VANCOUVER

2. I WILL, UPON BEING NOTIFIED BY ANY PEACE OFFICER THAT I AM WITHIN 100 METRES OF AN INTERNATIONALLY PROTECTED PERSON OR OFFICIAL DELEGATE TO THE ASIA PACIFIC ECONOMIC COOPERATION IMMEDIATELY DEPART FROM THAT LOCATION FOLLOWING THE DIRECTION OF SUCH PEACE OFFICER.

3. I WILL NOT PARTICIPATE OR BE FOUND IN ATTENDANCE AT ANY PUBLIC DEMONSTRATION OR RALLY THAT HAS GATHERED TOGETHER FOR THE SOLE PURPOSE OF DEMONSTRATING AGAINST THE ASIA PACIFIC ECONOMIC COOPERATION OR ANY NATION PARTICIPATING IN THE SO NAMED CONFERENCE.

Cpl. Harrison completed the Operational Plan, and, pursuant to his instructions, sent it to the Security Steering Committee for APEC for approval. At the time he was notified of its approval, a fourth condition was recommended to him for insertion into the undertaking. Cpl. Harrison was "uncomfortable" with the fourth condition and, as a result, it was not incorporated into the undertaking that the accused persons were required to sign. I see no need to make further reference to the proposed fourth condition.

Cpl. Harrison said he did not ask Crown Counsel to approve the three conditions that were contained in the undertaking document, and did not seek other legal advice about them, because they were intended as recommendations to a Justice of the Peace, to be taken into consideration along with all other factors relating to any alleged offence. I am satisfied that Cpl. Harrison believed that the Justice of the Peace would determine the appropriate conditions and consider the requirements of the *Charter*.

15.3. The Revised Undertaking Form

Before they were released, the six accused were required to sign the undertaking document, containing the three conditions, at the UBC Detachment. The first four accused were those arrested immediately after the museum became part of the secure zone in the early evening of November 22. The other two had made their way into that zone late in the evening of November 23 and were arrested when they refused to leave.

There was one difference between the form of undertaking signed by all six accused and the draft attached as Appendix 4 to the Operational Plan: the signed undertakings were entitled "Conditions for Undertakings Before an Officer in Charge" rather than "Conditions for Undertakings Before a Justice of the Peace."

Cpl. Harrison testified that after the Operational Plan was approved he amended the title of the form at the request of the VPD. The VPD wanted an undertaking in that form because its practice was to have releases from custody occur before an Officer in Charge, not a Justice of the Peace as required by the RCMP's Operational Plan. The fact is, however, that it was the "Officer in Charge" form redrafted for the VPD that came to be used at the RCMP's UBC Detachment for the release of the six prisoners.

15.4. Departure from the Plan

Cpl. Harrison was asked about this departure from the Operational Plan that he had developed:

> There was a great deal of confusion as to whose responsibility, the handling of these prisoners and--and this action was because of the fact that the site had not been fully secured and the manpower and resources allocated to--to the UBC venue were not on site at the time. Therefore, what ended up, in reality, happening, is that everything reverted to UBC Detachment and as a result of that, the prisoners and the whole process ended up coming under the--the command of Staff Sergeant Lloyd Plante. And at that point, the prisoners were--were in cells, booked in cells at UBC Detachment. Staff Sergeant Lloyd Plante and I had a discussion and he expressed to me that he felt, given the circumstances and conditions, that the best thing that we should do is ensure that the prisoners are released as soon as possible. We both agreed on this point, and felt that it was imperative that they be released as soon as

> possible, and therefore we departed from the plan and--and the release before Officer in Charge option was--was exercised.

S/Sgt. Plante confirmed that the releases occurred before an Officer in Charge in order to avoid detaining the prisoners:

> Q: All right. Why did you, first of all, decide that they should be released by an Officer in Charge, as opposed to going before a Justice of the Peace?
>
> A: Well the alternative was to detain these individuals in custody in my cell block until the next day, when a Justice of the Peace would be available, and I wanted to avoid that. I didn't feel that there would be a need to detain these people.

In agreeing to the use of the amended form of undertaking, Cpl. Harrison said the implications of bypassing an appearance before a Justice of the Peace never crossed his mind. He said it seemed reasonable to proceed as agreed by the two officers. S/Sgt. Plante said he believed that Crown Counsel had reviewed the conditions and that he had no flexibility in determining release conditions that were part of the Operational Plan.

15.5. The Complainants

None of the six accused persons filed complaints about the arrests, or about the undertakings they were required to sign. In their closing written submission, however, Complainants' counsel referred to "general complaints regarding the legality of the undertakings and the conditions they imposed." They identified two such complaints:

1. Mr. Gerald Wood said in his written complaint to the Commission: "I am no lawyer but I question the legality of the statement those arrested were asked to sign."
2. The B.C. Civil Liberties Association asked the Commission to inquire into, amongst many other areas, "the requirement of persons who [were] arrested to agree to certain conditions in order to be released from custody."

Complainants' counsel did not take issue with the first condition, but submitted that the second and third conditions were neither authorized by the *Criminal Code* nor consistent with sections 2(b), (c) and (d), 7 and 11(e) of the *Charter*. Given the complaints of Mr.

Wood and the Association, I am satisfied that all three conditions in the undertaking document are properly before me for consideration and I propose to address all three.

15.6. Subsequent RCMP Explanations

Prior to the hearing, the RCMP publicly addressed the three conditions and acknowledged that an error was made in the drafting and inclusion of the third condition. Soon after the close of the APEC conference, the RCMP issued a document entitled "The Most Frequently Asked Questions About APEC Security Measures" which contained two questions and answers relevant to this issue:

> **Leading up to, and throughout the course of APEC, several persons were arrested and brought in with the intention that they be charged criminally. Some were released pending their appearance in Court by means of an "Recognizance Before an Officer in Charge" [of the local RCMP detachment]. Although the Criminal Code of Canada gives the police the authority to use such a bail document, why were these arrested persons asked to sign something which prevented them from going within 100 metres of an APEC venue and/or an IPP?**
>
> One hundred metres was thought to be "reasonable and proper" within the context of the protection of IPPs.
>
> It was intended to prevent the continuation of further alleged criminal offences, as is the duty of the RCMP to do in any event.
>
> **The police also asked these arrested persons to sign a document which prevented them from participating in, or being in attendance at, any anti-APEC public demonstration or rally?**
>
> The use of this particular bail condition was unfortunate. If the RCMP were to do this over again, it would not have employed such a condition.
>
> Although it was not intended that these arrested persons be prevented from exercising their rights to freedom of expression and association, the wording of this particular condition nonetheless had that effect.
>
> It was a mistake which will not be repeated.

A/Comm. Johnston said, in reply to a question about his input into that answer:

> When I saw the various release conditions, and I saw that one, and I--it was my opinion that that was inappropriate, that--that we should not be restricting people from--from demonstrating away from the various events. And, in my opinion, it was

> inappropriate to have that specific condition in there, and I said that we should advise the public that it was an inappropriate condition; and admit that it was wrong.

15.7. Are the Conditions Appropriate & Consistent with the Charter?

15.7.1. Third Condition: a Blanket Prohibition

Sections 515(2) and (4) of the *Criminal Code* authorize a Justice of the Peace or a Provincial Court Judge to release an accused person on specified conditions, including such "reasonable conditions . . . as the justice considers desirable." In contrast, where it is a police officer who is releasing the person, section 503(2.1) of the *Criminal Code* applies. It specifies the conditions upon which an Officer in Charge may release an accused person and does not give a similarly broad discretion to determine and impose "reasonable conditions."

Counsel for the 44 RCMP members conceded that the third condition did not fall within the class of conditions set out in section 503(2.1) and overly restricted the *Charter* rights of the arrestees. Given that concession, and my own consideration of the matter, I am satisfied that the third condition was not authorized by the *Criminal Code*, was not consistent with sections 2(b), (c), (d) and 11(e) of the *Charter*, and was not "appropriate" to the circumstances. It was simply a blanket prohibition on political protest.

15.7.2. Criminal Code Authorizes First Condition

As to the first two conditions, Counsel for the 44 RCMP members submitted that they were authorized by section 503(2.1)(c) which permits an Officer in Charge to require a person, as a condition of release, to enter into an undertaking whereby the person agrees "to abstain . . . from going to a place specified in the undertaking, except in accordance with the conditions specified in the undertaking."

In my view, the first condition clearly required an accused to abstain from attending at specified locations and was, therefore, authorized by section 503(2.1)(c) of the *Criminal Code*.

15.7.3. *Second Condition not Authorized*

As to the second condition, when asked how he arrived at the 100 metre figure, which was included in both the first and second conditions, Cpl. Anderson answered:

> That figure came right out of my head, and I felt that it was a safe distance for a person to--to be restricted from attending within that area. Believing in my own mind that at 100 meters distance a person would not be able to commit a criminal offense that would cause--you know, the average person wouldn't commit a criminal offense that would cause tremendous disruption to the functions that were ongoing.

I accept that as an honest answer.

Complainants' counsel submitted that the second condition was not authorized by the *Criminal Code* because section 503(2.1)(c) does not expressly permit an Officer in Charge to impose a "moving bubble zone around a large number of unnamed persons." No authorities were provided to me by any counsel as to the ambit of section 503(2.1)(c). In my view, the matter is not free from difficulty.

On the one hand, although section 503(2.1)(c) does not expressly refer to a "moving bubble zone," and does appear to require specificity, one must not lose sight of the purpose of the legislation: the provision allows police to prevent persons who have been charged with an offence from being at locations where they might reasonably be expected to commit further offences. The second condition was imposed to further that purpose by preventing persons who had demonstrated a willingness to break the law by requiring them, upon notice, to maintain a 100 metre distance from an Internationally Protected Person or official delegate. The fact that the condition did not expressly refer to every possible location at which the APEC leaders may have been located at any given moment is neither surprising nor, arguably, fatal.

On the other hand, the general principle regarding the construction of penal provisions is that they should be interpreted in the manner most favourable to the accused. As stated by Lamer C.J.C. in *R. v. McIntosh*, [1995] 1 S.C.R. 686:

> It is a principle of statutory interpretation that where two interpretations of a provision which affects the liberty of a subject are available, one of which is more favourable to an accused, then the court should adopt this favourable interpretation.

Although the importance of this principle is perhaps magnified when an accused faces incarceration, it has been applied in the context of section 515(4) of the *Criminal Code* (*R. v. S.K.*, [1998] S.J. No. 863 (Prov. Ct.)) and, therefore, must be equally applicable to section 503(2.1)(c). That section specifically provides that an officer may require a person to undertake "to abstain . . . from going to a place specified in the undertaking, except in accordance with the conditions specified in the undertaking."

The problem with the second condition is that it did not require the accused to abstain from "going to a place specified in the undertaking." Rather, it was intended to create, as stated by Complainants' counsel, a "moving bubble zone" around the Internationally Protected Persons and APEC officials, at locations that were obviously impossible to specify.

In addition, the condition did not in fact prevent the accused from "going to a place" at all; rather, it required the accused to *depart* from a place upon being notified that they were within a 100 metre radius of the Internationally Protected Persons. Although this may well be a distinction without a practical difference, the rules of statutory interpretation compel me to interpret section 503(2.1)(c) in a manner most favourable to the accused. Therefore, I have concluded that the second condition was not authorized by section 503(2.1)(c) of the *Criminal Code*.

15.7.4. First & Second Conditions Unconstitutional & Inappropriate

Having determined that the first condition was authorized by section 503(2.1)(c) of the *Criminal Code* and that the second was not, the remaining issues are:

1. whether the two conditions were consistent with the *Charter;* and
2. whether they were "appropriate to the circumstances."

Counsel for the 44 RCMP members submitted that the first and second conditions "[did] not impose an unreasonable limit on the liberties of the released person, who remain[ed] free to stand 101 meters away from APEC venues, delegates or IPPs without breaching his undertaking." In contrast, Complainants' counsel suggested that requiring the accused to sign the undertaking with the second and third conditions violated their rights under sections 2, 7 and 11(e) of the *Charter*.

I believe it is unnecessary to consider section 7 (life, liberty and security of the person), as the undertaking did not affect the "life" or "security" interests of the accused persons. As to their "liberty" interests, I agree with the following statement by Professor Peter Hogg (Constitutional Law of Canada, looseleaf edition, v.2):

> "Liberty" does not include freedom of conscience and religion, freedom of expression, freedom of assembly, freedom of association, the right to vote and be a candidate for election, or the right to travel. These rights are all guaranteed elsewhere in the Charter of Rights, and should be excluded from s. 7.

It follows that the *Charter* rights in issue are sections 2(b), (c), (d) and 11(e). Commission Counsel and Complainants' counsel emphasized the decisions in *Re Keenan and The Queen* (1979), 57 C.C.C. (2d) 267 (Que. C.A.) and *Collins v. The Queen* (1982), 4 C.R.R. 78 (Ont. Co. Ct.). In *Keenan*, Lamer J.A. made it clear that, at the stage of a bail hearing, as opposed to a probation order, the presumption of innocence is still in effect and must guide the judge in imposing appropriate conditions of release. He also held that there must be a causal relationship between the conditions imposed on an accused and the dangers presented by the circumstances of the alleged offence.

In *Collins*, the accused was charged with obstructing the police during an anti-nuclear demonstration at a plant that produced electronic parts for cruise missiles. A bomb had been detonated near the plant the previous month, causing considerable damage. There was no evidence that the accused was involved in the bombing, and he was not a suspect, although he had earlier been convicted for trespassing at the plant. The accused was released on bail, subject to the conditions that he:

- not attend at, demonstrate, obstruct or in any way cause a disturbance within one half mile from the plant; and
- not incite or encourage anyone to do the former.

In the appeal against the conditions, the court made it clear that courts cannot impose conditions contrary to an accused's *Charter* rights on a "speculative concern of danger." Rather, the conditions must:

- further a "compelling state interest" unrelated to the suppression of expression and be no greater than necessary to protect the public; and
- be precisely drawn without any unnecessary erosion of rights.

After stating that it was also necessary to consider the "nature of the offence, the accused's criminal record or other information tending to show violence or anti-social behaviour of a dangerous nature on his behalf, and all the surrounding circumstances," the court ordered the deletion of the two conditions. The court appeared to be primarily concerned with the condition that the accused not "incite" or "encourage" anyone to protest at the plant, which would make it a crime punishable by imprisonment to "encourage others to take part in a lawful demonstration, to place papers in envelopes or to address correspondence."

The first condition imposed in this case was designed to ensure that none of the accused persons came within 100 metres of any APEC venues, regardless of whether APEC officials were even present, for the entire week of the APEC conference. Although Complainants' counsel did not object to the first condition, I am of the view that it was neither consistent with sections 2(b) or 11(e) of the *Charter* nor "appropriate" to the circumstances for these reasons:

- Firstly, the alleged offences were minor in nature. The six were accused of simply refusing to leave the museum grounds upon police request. In my view, although the accused thereby demonstrated a willingness to break the law, the RCMP did not have reasonable grounds to believe that they represented anything other than a "speculative" threat to the Internationally Protected Persons and APEC officials such that they had to be restricted from coming within 100 metres of them, wherever they may be.

There is no doubt that drawing appropriate conditions of release can be a difficult task for Crown Counsel, and perhaps more so for RCMP members. I am certain that their overriding concern was that persons who had shown themselves willing to break the law not be present to disrupt the balance of the APEC conference or pose a threat to Internationally Protected Persons. It must always be borne in mind that the RCMP had an enormous responsibility to ensure the safety of these visitors and, if a person released without conditions were to injure one of them, the RCMP would be subject to intense criticism. I also appreciate that I am viewing this matter with the benefit of hindsight. Nevertheless, in this instance, any risk of danger was "speculative" and, given *Collins*, insufficient to warrant the restriction.

- Secondly, and more importantly, one need only consider the practical effect of the first condition to see that it was overbroad. The accused were prohibited from attending within 100 metres of 10 specified buildings located in different parts of downtown Vancouver where foreign government officials "may be in attendance" between specified dates. The condition is not at all clear as to whether the accused were required to obey the prohibition at all times, regardless of whether any officials were in fact within such buildings.

  Although the intent of the condition may have been to prohibit the accused from infringing the area restriction only if the officials were within the building in question, the condition reads, or can reasonably be read, as a blanket prohibition

> against being in downtown Vancouver, regardless of whether APEC officials were inside any of the specified buildings. As a result, the practical effect of the condition was to preclude the accused from visiting the bulk of downtown Vancouver.

I am satisfied that the first condition was inconsistent with the *Charter* and unjustifiable in the circumstances. Although it may have been imposed in furtherance of a "pressing and substantial objective" (i.e., the protection of the Internationally Protected Persons) and may have been "rationally connected" to that objective, the objective could have been met without, in effect, making it a criminal offence for the accused to visit downtown Vancouver.

Furthermore, given the "speculative" nature of the risk posed by the accused, it is my view that the negative impact on freedom of expression caused by the first condition was not outweighed by its benefits and therefore the condition cannot withstand scrutiny under the third branch of the proportionality test, as modified by the Supreme Court of Canada in *Dagenais v. CBC*, [1994] 3 S.C.R. 835. It was overbroad and ambiguous and, following the *Collins* analysis, it was not "precisely drawn without any unnecessary erosion of rights." Having found that the RCMP conduct in question was inconsistent with the *Charter*, I am also satisfied that it was not "appropriate" to the circumstances.

As to the second condition, I am satisfied that it limited the rights of the accused provided by sections 2(b) and 11(e) of the *Charter* and that it was not authorized by section 503(2.1)(c) of the *Criminal Code*. As a result, it was not "prescribed by law" within the meaning of section 1 of the *Charter* and was, therefore, unjustifiable. It follows that it was not appropriate to the circumstances. I should note, however, that had the condition been imposed by a Justice of the Peace or a Provincial Court Judge pursuant to section 515(4), it may well have passed constitutional muster.

Having found that each of the three conditions was inconsistent with section 2(b) and 11(e) of the *Charter*, it is not necessary to go on to consider whether they conflict with section 2(c) and (d).

15.8. Recommendations for the Future

15.8.1. B.C. Civil Liberties Association Recommendations

In its desire to eliminate "similar errors" by the RCMP in the future, counsel for the B.C. Civil Liberties Association made the following points which will receive further consideration in Chapter 31 of this report:

> As a preliminary point, having recourse to legal counsel when drafting documents of this sort would seem to be a sensible precaution.
>
> Even without legal counsel, the RCMP could have asked itself the following questions concerning the undertaking, any one of which might have been sufficient to alert it to the problems inherent in the undertaking:
>
> - will anyone signing this protest [sic] still be able to engage in meaningful protest or will the undertaking preclude that?
> - does the undertaking impair the rights of persons signing it to the minimum degree possible, or does it go further than that?
> - are we doing our utmost to ensure that we comply with the relevant Charter provisions and jurisprudence?

15.8.2. Cpl. Harrison's Recommendations

Other recommendations that I will consider in Chapter 31 were made by Cpl. Harrison in his final report prepared on November 27, 1997. In that report, Cpl. Harrison acknowledged the error in having the conditions in an Undertaking and Release form imposed by an Officer in Charge rather than a Justice of the Peace.

He also referred in that report to his belief that many people who should have been aware of and familiar with the Operational Plan were not. In his evidence, he said that he was given no opportunity to brief those he described as venue or site commanders, even though such briefings were called for in the Operational Plan. He also expressed regret in not having had the opportunity to brief the Quick Response Team members who he believed would and in fact, did, make the vast majority of arrests involved in the whole process. He said that the investigating and arresting officers were not aware that they were to take action and provide details of the arrests and prepare the report to Crown Counsel if one were required.

15.9. Undertakings Should be Prepared with Legal Advice

Often there will be a "compelling state interest" in taking steps to prevent those who have shown a willingness to break the law from being allowed close to Internationally Protected Persons, as they might act unlawfully again. The difficulty facing the police when they control the release of an accused is determining the proper nature and extent of any restrictions they may choose to impose. This is a complex task, as it requires the police to assess the factors listed in *Collins*; namely, the "nature of the offence, the accused's criminal record or other information tending to show violence or anti-social behaviour of a dangerous nature on his behalf, and all the surrounding circumstances." They must also ensure that restrictions further a "compelling state interest," are "precisely drawn without any unnecessary erosion of rights" and are not imposed on a "speculative concern of danger."

As a general rule, for example, a person charged with obstructing a police officer in the course of civil disobedience during a passive political protest should not be burdened by the same restrictions as might be placed on a protester who commits a deliberate and serious assault. Clearly, the protester who commits such an assault presents a greater risk to Internationally Protected Persons than does a passive protester and, therefore, stricter conditions may well be justified. From a practical point of view, however, can the RCMP reasonably be expected, on the spot, to tailor each undertaking document to the degree of risk presented by each accused person and account for all of the surrounding circumstances without unnecessarily eroding *Charter* rights, all without the benefit of prior legal advice?

In the present case, the reality is that, given the magnitude of the anticipated protests, the RCMP quite rightly expected that people would be arrested and would be released on conditions. Therefore, they attempted to draw up a "catch-all" document, which prisoners were ultimately, and indiscriminately, required to sign. It was not vetted in advance by Crown Counsel and it was never intended to be used by an Officer in Charge.

If a police officer prepares an undertaking document before the fact, without knowledge of the specific offence in question and the background of the accused, and without the benefit of legal advice, it will be a rare case indeed where the undertaking will properly account for the considerations referred to in *Collins*. Therefore, my view is that the RCMP should, wherever possible, ensure that their undertaking documents have been prepared, or at least vetted, by Crown Counsel or a Department of Justice lawyer. Even this measure will not guarantee that the restrictions will suit the specific circumstances of each prisoner. Unfortunately, that practice was not followed in this case and, as a result, accused persons were required to sign a document which unreasonably restricted their personal freedoms.

16. COMPLAINT CATEGORY 4: REMOVAL OF PRESS PASS

Dennis Porter was a Simon Fraser University student who had volunteered as a cameraman with Working TV during the APEC conference. He obtained a press pass, which gave him access to the media centre at the Vancouver Trade and Convention Centre. He complains that during the conference, an RCMP officer wrongfully removed his press pass.

16.1. Media Accreditation

In all, 23,000 people, including about 3,000 media representatives, were accredited to attend all or part of the APEC activities over the week long event. Mr. Porter was one of them. According to Mr. Porter, Working TV is part of the "alternative" media and has a particular perspective on social justice issues such as the effects of "globalization" on workers.

Two levels of media accreditation were issued by ACCO for the APEC conference:

- the first level, which was given to Mr. Porter, was a general media pass providing access to the media centre at the downtown Vancouver Trade and Convention Centre which was an otherwise restricted area; and
- the second level was a special media pass which allowed the bearer to be included in the various pools of media personnel which, from time to time, were escorted by RCMP members inside other restricted areas to report on specific events.

To obtain accreditation, Mr. Porter completed an application and submitted it with a letter of assignment from his producer and a photograph of himself. He understood that he would be subject to a security check. Once Mr. Porter was accredited, he was given a general media pass (with his name, picture and a bar code) to be worn around his neck while performing his media work at APEC events. He said he was told that he was too late to apply for the second level of accreditation.

16.2. What Happened

16.2.1. Initial RCMP Contact with Mr. Porter

Sgt. John A. Buis was the RCMP Media Coordination Officer for APEC and was responsible for monitoring the media inside certain secure areas and escorting media pools to cover special events. He described himself as being in charge of media security. He spent considerable time at the media centre in the Trade and Convention Centre and encountered Mr. Porter there on November 19. Sgt. Buis said that he had a conversation with Mr. Porter and an associate at that time because he had concerns about their conduct. He asked for their accreditation and they produced it. Despite the encounter, Sgt. Buis said that Mr. Porter retained his trust and that the RCMP did not interfere with the privileges afforded to Mr. Porter by his media pass.

16.2.2. Media Pool at the Museum

On the evening of November 22, Sgt. Buis conducted a pool of media personnel to the Museum of Anthropology grounds, which earlier in the evening had become part of the secure area pursuant to the amended Licence Agreement. He explained why a pool of reporters was taken to that site:

> At about 5:00 p.m., I learned that the Museum of Anthropology site was going to be turned over to the Federal Government, and as such, there were a number of protestors encamped on the hill in the rear of the Museum of Anthropology. Once the property was turned over to the Federal Government and the site was turned into a secure site, the protestors would be asked to leave. If they did not leave, then they would be arrested. My concern was that I wanted the general public and an independent organization, such as the media, to observe how the arrests took place.

After the museum grounds became a secure area the second level of accreditation was required for access. In discussing the "double pass" system, Sgt. Buis said:

> So it was a double pass system, and from my knowledge of any of the activities that were going to go on at the Museum of Anthropology, the double pass system was

> going to be in effect.
>
> So that not only would they be required to have their original media accreditation, but they would be required to have a secondary pass to get into that area.

Mr. Porter was at his usual location, which he called the regular "tent city" on campus, when he learned that a media pool was at the museum site, so he went there. He said he had his media pass around his neck and that another person associated with Working TV carried a camera to "shoot" the events. As the museum site had become part of the secure area, Mr. Porter's pass did not entitle him to be there although, because the amendment to the Licence Agreement had not yet been made public, there is no reason to believe that Mr. Porter was aware of that fact.

16.2.3. Mr. Porter's Press Interviews

Sgt. Buis explained what occurred after the media representatives had witnessed the arrests at the tent site:

> At about 10 to 15 metres to the north of the encampment I heard a--a man conducting a press conference, an impromptu press conference. And I observed Dennis Porter, who had not come along with the media pool, giving an impromptu press conference on the top of a hill. To me he appeared to be one of the protestors because he was speaking on behalf of the protestors and--and giving a press briefing on what was going on. This concerned me a great deal because I had escorted the media into a secure area and he was not part of that media pool. I got the people to move again back towards the bus and about another 10 metres further to the north, again Mr. Porter began speaking on behalf of the protestors, as if he were one of the protesters, giving his views on what had taken place.

Although Sgt. Buis referred to seeing Dennis Porter, it was not until the next day that he had satisfied himself that it was, in fact, Mr. Porter who had been speaking to the media the evening before.

The media pool members who were escorted to the museum on November 22 held "second level" accreditation. As the holder of level one accreditation, Mr. Porter was not entitled to enter the area. This was understandably quite significant to Sgt. Buis, who was concerned that Mr. Porter was in a secure area when he was not entitled to be there.

Mr. Porter described what occurred at the MOA site on the evening of November 22:

A: I was approached--I was with the media shooting, and I had contact lens problems. And I went off by myself to fix my contact lens problem, at which point, I was approached by a member of the media asking for an interview.

Q: Okay. And I'm going to suggest to you that the substance of the comments that you made during that interview were critical of APEC and the arrest that had taken place that evening?

A: I would say that's true.

. . . .

Q: Okay. But you do recall that when you were asked for an interview by the media--by one media person, you then gave some comment?

A: I explained to him that I was--I was there shooting, and he said, well, we need someone to interview.

Q: Okay, and you--

A: And so he said--yeah--I explained to him that I wasn't that party. He said we need it, and I said fine, I will give you an interview then.

. . . .

Q: Okay. And during your comments to the media, the media people, in fact, turned their cameras to you and recorded your comments?

A: Yes, I would--I would believe that to be true.

16.2.4. Removal of Mr. Porter's Pass

The next day Mr. Porter was out with his camera shooting a march by the People's Summit, which was holding meetings in Vancouver during the APEC conference. The march ended at the media centre at the Trade and Convention Centre. There, Sgt. Buis approached Mr. Porter and asked that he accompany him into a large tent just outside the convention centre. Mr. Porter said at the time he did not know Sgt. Buis and did not recall having met him. He said that Sgt. Buis took his media pass from around his neck and told him it was no longer valid. When Mr. Porter asked for an explanation, he said he was told he would have to go to the media accreditation centre, which Mr. Porter believed was staffed by civilians. Mr. Porter went to the centre but got little satisfaction other than someone telling him that he had lost his accreditation because he had, at some point, jumped over a barricade and done an interview. Mr. Porter believed the RCMP had decided that he was a protester and, for that reason, removed his accreditation.

Sgt. Buis explained his actions during the early afternoon of November 23:

> As I recognized him as being the same person who appeared to be a protestor from the night before, I was concerned and I formed the opinion that he did not warrant media accreditation. And if I might explain that people that are given media accreditation are usually professional media reporters who report on the situation and don't become part of the story. When people are given accreditation to go into secure areas, there's an element of trust that these people will take direction from the security people and will conform to the--the rules that are set out to them. A lot of times there are physical barriers and other lines, so to speak, drawn so that--that the media stays behind them so they don't affect the security of the situation. So they act in a predictable manner. I formed the opinion on the afternoon of November the 23rd that Mr. Porter no longer had my trust that he would act in a predictable manner when inside a secure area.

Sgt. Buis acknowledged that he did not advise Mr. Porter of his concerns or invite him to address those concerns before deciding to revoke his accreditation and remove his media pass. Sgt. Buis said he understood that any police officer could remove media accreditation any time the officer believed security was at risk, and he came to believe that Mr. Porter represented a security risk. With respect to his authority to act as he did, Sgt. Buis said:

> As the person in charge of overall media security, I thought I had the right to suspend people's media accreditation. And media accreditation is not a right, it is a privilege that's gained by applying for it and going through various security screening procedures.

Mr. Porter lodged his complaint against Sgt. Buis for what he referred to as an "unnecessary use of power."

16.3. Issues

16.3.1. Press Pass: Right or Privilege?

Complainants' counsel submitted that the seizure of Mr. Porter's media credentials violated the freedom of the press guaranteed by section 2(b) of the *Charter*. In their view, there was no evidence that Mr. Porter was a security threat.

The B.C. Civil Liberties Association submitted that, although Mr. Porter agreed that his media pass gave him certain privileges, "that should not be taken as in any way conceding that what was accorded to him were merely privileges that might be taken away arbitrarily, rather than rights or legitimate expectations". In their view, the RCMP failed to comply with natural justice and procedural fairness by "arbitrarily" confiscating his pass without providing him with an opportunity to be heard on the matter:

> ... it is clear that the RCMP's treatment of Dennis Porter was not consistent with standards of natural justice and procedural fairness. Sgt. Buis admits to having only advised Mr. Porter of the intention to remove his accreditation after having physically taken possession of the accreditation, and to not having advised Mr. Porter of his concerns and affording him the opportunity to address those concerns before making his decision (Buis, February 2, 2000, pp. 44-45). The completely arbitrary nature of the decision to confiscate his pass and the lack of any opportunity for him to challenge the confiscation were completely at odds with the standards that have been established by Canadian courts. Those decisions were, on the other hand, consistent with Sgt. Buis' view that he was not bound by any rules in making his decision to revoke Dennis Porter's media accreditation.

The Association also submitted that, given section 2(b) of the *Charter*, the police must not be allowed to "arbitrarily prevent reporters that [incur] their displeasure from functioning as reporters", as doing so would prevent "meaningful reporting" and result in an uninformed electorate and the eventual demise of democracy.

Counsel for the 44 RCMP members stated their position:

> Media accreditation is a privilege which permits *bona fide* journalists into secure areas where members of the public are not permitted. A condition of receiving the accreditation is that the recipient will conduct himself or herself according to the standards expected of journalists who have been permitted into secure areas. This means, in particular, that they will abide by the security regulations, observe the directions of the police security officers, and not seek to create a story when they should be merely reporting one. Mr. Porter forfeited the privilege of possessing media accreditation when he staged a press conference . . . .

I take counsel's position to be that it was an implied condition of accreditation that, at an event presenting major security concerns, the accredited person merely reports on the events observed and does not "seek to create a story." I believe that is a reasonable position and I agree with it.

16.3.2. Freedom of the Press

The first issue to be addressed is whether Sgt. Buis' conduct was inconsistent with respect for section 2(b) of the *Charter*; specifically, freedom of the press.

To begin, Mr. Porter was not accredited to be at the museum site: it had become part of the secure zone by virtue of the amendment to the Licence Agreement and he did not have a "second level" media pass. However, as there was no evidence to suggest that either he or the general public had been made aware of the change in the agreement, I cannot conclude that he deliberately entered a restricted area without accreditation.

Had Mr. Porter known that the museum grounds had become part of the secure zone, I would not hesitate to conclude that Sgt. Buis was entitled to revoke Mr. Porter's accreditation, as the RCMP should not have to tolerate deliberate non-compliance with established security procedures. Furthermore, there is no doubt in my mind that the RCMP may revoke the accreditation of a media representative who has deviated from the conduct expected of accredited media personnel and who the RCMP conclude poses a security risk.

As to the *Charter*, I have serious doubts as to whether section 2(b) was engaged in these circumstances. In my view, his media pass simply granted Mr. Porter certain *privileges* over and above those enjoyed by the public. It did not confer an irrevocable *right* to the continued benefit of those privileges. No authorities were cited to me in support of the proposition that Mr. Porter had a constitutionally guaranteed right which could only be taken away by, in the words of section 1 of the *Charter*, "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." As a result, I am not prepared to conclude that Sgt. Buis' conduct was inconsistent with respect for the *Charter*.

16.3.3. Appropriateness of the Removal

The remaining issue, therefore, is whether Sgt. Buis' conduct was "appropriate to the circumstances."

I have no doubt that Sgt. Buis was entitled to revoke Mr. Porter's accreditation if, in Sgt. Buis's professional judgment, he presented a credible security risk or if he deviated, in a meaningful way, from the conduct expected of accredited media representatives.

The proposition that a media pass carries certain implied conditions has particular application to a situation where accreditation is conditional upon a successful security clearance. It is only reasonable to expect that a person who applies for a media pass knowing that it requires a security check, will use the privileges associated with the accreditation only for the purposes for which it was granted: namely, to report on events. If instead the person engages in activities that a police officer reasonably perceives to be actually creating news, rather than reporting on it, the officer could be expected to have significant concerns about whether that person will act acceptably and predictably in the future.

Put another way, I believe Mr. Porter's accreditation was revocable in the event of conduct that, in the opinion of those responsible for media security, was inconsistent with the purpose of the accreditation. Conducting himself as he did at the museum site on the evening of November 22 was simply not in accord with the purpose for which media accreditation was granted. Although Mr. Porter may not have been specifically aware that the museum had become a secure zone at the time he entered it, he certainly became aware that the tenters had been arrested and that the RCMP had some reason for taking that action. Even if he was not aware that the area had been secured, Mr. Porter went to the museum site with his camera, in his capacity as a media representative. When Mr. Porter assumed a different role, Sgt. Buis reasonably concluded that he was "unpredictable" and might be prepared to ignore the implied conditions of his accreditation in the future, thereby creating a security risk.

I do not therefore believe that Sgt. Buis' decision was "arbitrary": rather, it was based on his professional judgment that Mr. Porter's continued accreditation represented a security risk.

I am cognizant of the fact that Mr. Porter was given no opportunity to explain himself and, in hindsight, it may have been preferable for Sgt. Buis to have discussed the matter with Mr. Porter before deciding what action to take. Nevertheless, I am satisfied that Sgt. Buis acted appropriately, if not perfectly, in the circumstances.

17. COMPLAINT CATEGORY 5: SINGH ARREST, CHARGE & RELEASE

This aspect of Jaggi Singh's complaint is that he was arrested on an outstanding warrant based on a spurious charge; the manner of the arrest was inappropriate in the circumstances; the timing of the arrest was calculated to prevent him from attending protests on November 25; and the bail conditions sought were overly restrictive.

17.1. Overview

Jaggi Singh was prominent in anti-APEC activities on campus in the days and weeks leading up to the November 25 leaders' meeting at UBC. After an incident on November 7, he was charged with assaulting a campus security guard and a warrant was issued for his arrest. He was arrested by four police officers on campus on November 24 and released only after undertaking to the court not to be found on the University Endowment Lands, which of course includes the UBC campus.

17.2. The November 7 Incident

Mr. Singh was one of a group of APEC Alert members participating in anti-APEC activities around noon on November 7 at UBC. These activities included writing with washable chalk on the windows of Norman Mackenzie House. Outside the house, Mr. Singh confronted the person he later learned to be Dave Goodrich, an assistant patrol manager for UBC Campus Security. Mr. Singh said he asked for Mr. Goodrich's identification but was not shown it.

Mr. Singh's version of what happened next is that he stood a couple of feet behind Mr. Goodrich and spoke through a megaphone. Mr. Goodrich threatened to punch him and Mr. Singh repeated the threat to the crowd, using the megaphone. He said he is experienced in the use of megaphones and did not intend to cause Mr. Goodrich any injury.

Mr. Goodrich's version of events is that he was watching protesters at the rear of the house when Mr. Singh approached him and demanded his identification. Mr. Singh then walked behind him and, at his right side, screamed something through a bullhorn into his right ear. Mr. Goodrich said he flinched and told Mr. Singh that if he did that again he would rip his arm off. Mr. Singh smiled to the protesters and yelled through the bullhorn that he was being threatened.

Mr. Goodrich was firm in his belief that Mr. Singh had intentionally "screamed something into a bullhorn" into his ear.

Mr. Singh was equally firm in his belief that he never aimed his megaphone directly at Mr. Goodrich's ear. On November 7, Mr. Singh did not know Mr. Goodrich either by name or sight. The first time Mr. Singh heard of the allegation that someone had been physically injured by his actions on that day was when he was arrested on November 24 as he walked across the UBC campus.

17.3. APEC Alert and Mr. Singh

Mr. Singh described himself as an organizer and activist with APEC Alert. He denied that he played a leadership role but there is no doubt that he was seen as a leader by others both inside and outside the group. According to witness Craig Jones: "[c]ertainly Jaggi Singh had been the most vocal of the APEC Alert representatives."

Mr. Singh had recently completed two years of study at UBC but was not attending UBC in the fall of 1997. He testified that APEC Alert had come together in about January of 1997 when it became known that UBC would be the site of the APEC leaders' meeting on November 25. Its purpose was to determine how the university community could respond and to develop a strategy for showing opposition to APEC. Tactics included films and forums to raise awareness on campus and other activities "right up to non-violent civil disobedience and direct action."

When asked whether violence was part of APEC Alert's fundamental philosophy, Mr. Singh responded:

> Absolutely not. It was actually the opposite. There are two things--I mean APEC Alert was a pretty defuse group. There were a lot of different people involved. People who considered themselves liberal party supporters to people who considered themselves anarchists and communists. But our basis of unity essentially, was based on two things, the first was, an opposition to APEC, a clear opposition to APEC because there were--there were some organizations that felt, well, some parts of APEC are good, some are bad but we felt the APEC agenda, the agenda represented was wrong and was to be opposed. So, we opposed APEC. And the second basis of unity was a commitment to nonviolence; not necessarily a commitment to nonviolence per se, but a commitment to engaging in nonviolent civil disobedience as a tactic, amongst other tactics.

APEC Alert's protest strategy comprised three stages:

- "Refuse APEC" from September to November 17. Among other things, this stage involved regular meetings; road hockey games on the driveway of Norman Mackenzie House; and establishing an "APEC-free Zone" on campus by painting lines enclosing an ever-increasing area of the campus to symbolically "reclaim" the campus and to include the Museum of Anthropology within the "APEC-free Zone" by November 25.

- "Summit Under Siege" from November 17 to 24. This stage included establishing a "tent city" (known as "Democracy Village" or "Demoville") on the grass near the Goddess of Democracy statue in the vicinity of the Student Union Building to symbolically reclaim the campus and to provide a focal point for information and discussion.

- "Crash the Summit" on November 25. This activity began at the Student Union Building and culminated in the march to the fence near the flagpole at noon that day.

17.4. The Complaint to Police

On November 7, Mr. Goodrich prepared a report on the incident and delivered it to the UBC RCMP Detachment. He recorded in the report that at 3:30 p.m., about three hours after the incident, his "right ear was still ringing and sounds [were] somewhat muffled."

Mr. Goodrich went back to the UBC Detachment on Monday, November 10. He told S/Sgt. Plante that his ear had continued to cause him discomfort over the weekend and had interfered with his ability to sleep. He asked S/Sgt. Plante if Mr. Singh could be charged with an offence arising out of the megaphone incident. S/Sgt. Plante told Mr. Goodrich that he would look into it and get back to him. Later, he told Mr. Goodrich that an assault charge could be considered.

That evening, Mr. Goodrich had his ear examined by a general medical practitioner. He was referred to a specialist and was given an appointment later in the month.

17.5. The Decision to Recommend a Charge

S/Sgt. Plante directed Cst. J. P. Lee of the UBC Detachment to begin a criminal investigation with respect to Mr. Goodrich's complaint. Cst. Lee telephoned another security officer, Mike Gesi, who had been with Mr. Goodrich on November 7, and asked him to submit a statement regarding the incident. Cst. Lee did not contact Mr. Singh nor did he try to identify any other potential witness.

On November 12, Mr. Goodrich prepared a further report on the November 7 incident and brought it to the UBC Detachment office. It was considerably more detailed than his report of November 7.

Even though it was not until November 14 that S/Sgt. Plante received the results of Cst. Lee's investigation, it is apparent that he had already made up his mind to do what he could to keep Mr. Singh off campus on November 25. On November 13, S/Sgt. Plante sent an e-mail to four detachments in the Lower Mainland asking each to have four officers available for duty on campus as the need arose. He began his message by saying:

> An anti-APEC group, APEC ALERT, have several planned demonstrations which may involve civil disobedience from now until the conclusion of APEC on 97/11/25. We have experienced problems at the President of UBC's residence wherein APEC ALERT have attended at her residence and written anti-APEC slogans on the windows of her res. We currently have three members of the group charged and are pursuing our investigation which may result in additional charges. It is hoped that we can obtain support from Crown which may result in a charge of assault against the obvious leader of the group, JAGGY SINGH. It is our intention if we can obtain a "no-go UBC" with respect to SINGH, we may basically "break the back" of this group.

S/Sgt. Plante was asked about the reference in his November 13 e-mail to "breaking the back" of APEC Alert:

> Q: But you say you want to--I'm using my words here, effectively break the back of this group, is that the APEC Alert group--group you're talking about?
>
> A: What I'm referring to there, is--is, in my feelings at that time, is that as I previously stated, is that Jaggi Singh was clearly a recognized leader within this group, in my view he was. In my view, Jaggi Singh's presence amongst the group, drastically changed the dynamics of that particular group. In other words, Jaggi Singh, in my view, was intent upon leading his group into serious protests - a serious confrontation with the Police. And my view is that if Jaggi Singh was eliminated from that particular group, the dynamics drastically changed and that the likelihood of us, I mean us, being the police, being involved in serious confrontation with anti-APEC, or APEC Alert rather, was drastically reduced. And that's the intent of what I meant there.

17.5.1. The Report to Crown Counsel

In British Columbia, charges are laid by Crown Counsel, on the basis of information provided by the police in a Report to Crown Counsel. S/Sgt. Plante reviewed the Report to Crown Counsel delivered to him on November 14 by Cst. Lee and concluded that there was some evidence to support a charge of assault. In his testimony, S/Sgt. Plante conceded that the megaphone incident constituted a minor assault and that, on a scale of one to 10, with 10 being the most serious, the assault was "down towards the one area. It would be a more minor assault."

Cst. Lee said, and S/Sgt. Plante agreed, that it was S/Sgt. Plante who suggested that the Report to Crown Counsel request a warrant and that conditions be placed on Mr. Singh's release. As a result of those suggestions, the Report to Crown Counsel was amended. In its new form it asked that a warrant be issued for Mr. Singh's arrest (as opposed to a summons to appear in court) and that his release be subject to conditions not to go to the UBC campus or the University Endowment Lands or Mr. Goodrich's residence, and to avoid contact with Mr. Goodrich. Consistent with RCMP policy in matters of civil disobedience, S/Sgt. Plante, at 11:50 a.m. on November 14, faxed the material, which had been "certified correct" by Cst. Lee, to Administrative Crown Counsel Brian Shaw in Richmond for charge screening, as he felt that the matter "deserved careful consideration by Crown Counsel."

The Report to Crown Counsel set out the reasons for the request for conditions:

> Reasons for Conditions:
>
> - The accused is known by Campus Security and the RCMP as a prominent member of a group known as "APEC ALERT". Numerous protests have been conducted by the group on the UBC campus. GOODRICH has attended many of the protests and observed the accused as the leader of the group. GOODRICH states, the accused, in the most recent incident urged the group of protesters in their task by way of the bullhorn. GOODRICH is a Auxiliary Constable with the Royal Canadian Mounted Police and is well aware of the right to peaceful protest. The accused, after causing injury, did show intent by smiling at GOODRICH's reaction.
> - The confrontational manner exercised by the accused and the physical injury inflicted is not in accordance with the right to peaceful protest and should not be permitted to continue. GOODRICH was in attendance to observe and keep the peace and in no way did he initiate confrontation or attempt to interrupt the protesters. The accused deliberately approached, confronted, and caused physical injury.
> - With the approaching APEC conference, protests will bring about confrontations between the accused and GOODRICH. GOODRICH is the Assistant Patrol Manager for the Campus Security and will be present to supervise Campus Security members at most of the protests that might arise. The accused is known to lead most of the protests and would encounter GOODRICH again.
> - The accused is not a student at UBC and does not reside on campus or on the University Endowment Lands.
> - Campus Security is involved in patrolling and securing UBC campus grounds, buildings, residences and parts of the University Endowment Lands. In order for the accused to have no contact with GOODRICH, the no go condition in conjunction with, not to attend residence of GOODRICH, should include the UBC campus and University Endowment Lands.

- The accused should not be able to continuously cross the line from peaceful protesting to confrontational and possibly risking further injury to those who are present to support peaceful protests. If such actions persist, it could jeopardize the safety of the Internationally Protected Persons due to arrive and to those individuals targeted by the protest.

Crown Counsel Shaw and S/Sgt. Plante spoke on the telephone after Mr. Shaw had received the Report to Crown Counsel. Mr. Shaw apparently asked for clarification of the rationale for the recommendations. In answer, on November 17, S/Sgt. Plante faxed Mr. Shaw a four-page document outlining the "history of APEC Alert as the group impacts the local community." In the document, S/Sgt. Plante said that at about 2:00 a.m. on October 16, Dr. Piper had reported that three individuals were on the roof of the atrium at the rear of her residence. RCMP and campus security personnel attended at the residence, but the suspects had fled.

S/Sgt. Plante's document also referred to the "ball hockey" games that were played on Wednesdays as a form of protest by APEC Alert members on the private driveway leading to Norman Mackenzie House. The games apparently began October 22, with 15 APEC Alert members, including Mr. Singh, playing on Dr. Piper's driveway. When they were asked by campus security to leave and refused to do so, the RCMP were called. Cst. Lee and S/Sgt. Plante were among the attending officers. Although S/Sgt. Plante did not know UBC's position on the presence of APEC Alert members on Dr. Piper's private driveway, he explained to the group that refusing to leave the property "could constitute an offence of assault by trespass." Although the members dispersed without incident, some of them indicated that they were "prepared to risk arrest to support their position." S/Sgt. Plante later contacted Prof. Pavlich who said that if the group confined themselves to the driveway and did not damage the residence, Dr. Piper was prepared to allow them to 'play' on Wednesdays.

On Hallowe'en, which was Friday, October 31, a group of protesters apparently went to Dr. Piper's residence and wrote on her windows. S/Sgt. Plante believed that this had violated UBC's conditions. Although no physical damage had been done to the residence, S/Sgt. Plante decided to direct the arrests of some of the protesters because Dr. Piper's privacy had been violated and she needed protection, and because he was concerned that there would be "repetitions of the acts which may escalate in violence." Two people were arrested.

The RCMP then began providing 24-hour security coverage at Dr. Piper's residence because of a concern that APEC Alert would cause "irreparable damage" to the residence where the APEC leaders were scheduled to have lunch on November 25.

S/Sgt. Plante said in his report of November 17, that the incident of November 7 "was obviously in response to" the arrests of October 31.

S/Sgt. Plante then said:

> For the sake of consistency and with a view of eliminating some of the more high profile members of Apec Alert from the UBC area or at least from Dr. PIPER's residence, the Report to Crown Counsel was forwarded recommending charges against the one individual who could be identified from the 97/11/07 incident. It was also recommended that a charge of assault be laid against SINGH, who, as indicated, is undoubtedly the "leader" although he, himself, denies that there is a specific leader within the group.

17.5.2. Eliminating Confrontation

S/Sgt. Plante was asked about the reference in his report to "eliminating" APEC Alert members from the UBC area. He said:

> A: And that what I am trying to do sir, is eliminate confrontation.
>
> Q: All right.
>
> A: And by eliminating Mr. Singh from the UBC area, I feel that I will eliminate the likelihood of confrontation.
>
> Q: And sir, it seems apparent, then, from what you have been saying and what you are saying now, is that when you say, "Your purpose is to eliminate confrontation" even at the risk of eliminating lawful and peaceful protest or lawful and peaceful confrontation; correct?

A: Sir, I had no interest, absolutely no interest, in interfering with lawful protest. Absolutely none. My only concern was confrontation. That they could lead to serious incidents.

Q: You knew that the Anti APEC Group was - leaving aside Mr. Singh - committed to non-violent lawful protest; didn't you sir?

A: The information I had was that they were. And the concern I had was that Mr. Singh had the ability to lead them into confrontation that could become serious.

Q: Hmm hmm.

A: Without his presence, the dynamics of that group changed drastically. And I feel that he had a very significant amount of control over it, and that's what I was trying to eliminate.

S/Sgt. Plante was asked what consideration he had given to Mr. Singh's right to protest or express himself lawfully when he recommended that Mr. Singh not be permitted to go to the University Endowment Lands. He said:

A: I had absolutely no concerns about Mr. Singh's rights to lawful protest. That wasn't my concern. My concern from - as the Detachment Commander - was to provide a safe environment for the University, of course, which is one of my major clients out there. If Mr. Singh, in my view, had restricted his activities to just protest, obviously I didn't feel that any of this would be necessary.

Q: So you thought that had he been permitted to go back to the University on the 25th of November, 1997, that he would protest unlawfully?

A: Sir, I'm not certain what an unlawful protest is. In my view, protest is legal; it's criminal activity that I was concerned about.

Q: All right. I think your point is well taken. You thought that he may engage himself in activities that were contrary to the Criminal Code?

A: Yes.

Q: Okay.

A: Or if I could add to that? I'm sorry.

Q: Yes.

A: Perhaps not himself, but promote others to do that.

Q: Incite others to contravene the provisions of the Criminal Code—

A: Yes sir.

S/Sgt. Plante was asked why he had recommended an arrest warrant as more suitable than a summons to bring Mr. Singh before the Court. He said:

A: . . . . We felt it was appropriate to have conditions on Mr. Singh. The only way that I was aware that those conditions could be placed upon him after the charge had been laid, was via a warrant being issued and him being physically detained, and the conditions being a portion or a condition of release.

Q: That's because if there's a summons that issues, no conditions attach to the summons, except to go back to Court on a certain day; is that right?

A: That's right. It's my understanding that conditions are only a condition of release, so by way of summons, those conditions cannot be imposed.

Q: Because there's no release involved?

A: That's correct.

Q: Now, sir, why did you think it necessary to have conditions on Mr. Singh?

A: Because I was convinced, based on my experience dealing with incidents at the University, within the University, that Mr. Singh was intent upon promoting violent confrontation between the police and people that were expressing Anti-APEC sentiments, in particular, APEC Alert, which was a university based group.

S/Sgt. Plante was asked what it was about Mr. Singh that led to the conclusion that he might promote "violent confrontation" if permitted to return to the campus. S/Sgt. Plante answered that question at great length. I have read and re-read his answer and I can glean from it only the following:

- S/Sgt. Plante was satisfied that Mr. Singh was the leader of APEC Alert. He may well have been quite correct in that conclusion.
- S/Sgt. Plante believed that a press release put out by Mr. Singh on about October 29 was fraught with lies that would antagonize students to the point where a serious confrontation could arise.
- Mr. Singh was one of those who participated in the weekly hockey games on Dr. Piper's driveway and, in a direct response to some arrests that were made there on October 31, Mr. Singh took 50 to 60 protesters to the residence on November 7 (the occasion of the Goodrich incident). This was part of a pattern that S/Sgt. Plante saw developing with Mr. Singh promoting confrontation between police and the people he was leading.

The long explanation given by S/Sgt. Plante was, in my opinion, no answer at all to the question of why he would conclude that Mr. Singh would promote violent confrontation if allowed on campus on November 25. Rather, S/Sgt. Plante decided, correctly I believe, that the police assignment on November 25 would be an easier undertaking without Mr. Singh's presence. Then, on the flimsiest of grounds, albeit legally sufficient, he formulated a series of recommendations to Crown Counsel which, if imposed, would accomplish his objective of eliminating Mr. Singh from the campus on that day. To add insult to injury, S/Sgt. Plante took that step without any concern whatever for Mr. Singh's right to lawful protest.

17.6. Mr. Singh's Arrest

On Friday, November 21, S/Sgt. Plante was told that Mr. Singh had been charged with assault and that a warrant for his arrest had been issued that day. S/Sgt. Plante was in charge of arranging for the arrest.

17.6.1. Timing of the Arrest

Over the weekend, S/Sgt. Plante had discussions with both RCMP and VPD officers about how and when to arrest Mr. Singh. S/Sgt. Plante did not want him on campus on November 24 so he saw the morning of that day, before Mr. Singh arrived on campus, as the best time from "a strategic point of view." He said his "strategic objective" was to eliminate confrontation. He did not want Mr. Singh arrested in an emotional setting that could lead to a serious confrontation between Mr. Singh's supporters and police. He thought that making the arrest in a controlled, off campus location on the morning of November 24 would be the best way to minimize negative fallout. Arresting Mr. Singh over the weekend might allow too much time for an escalation of tensions in the days immediately preceding the leaders' meeting. He said:

> A: I didn't know what to expect by this arrest. Obviously, if he was arrested, for example, on the 22nd, and that created an emotional impact, there was a possibility of that emotional impact sort of elevating over the next three or four day period.

And further:

> Q: Okay. So it was your view that the reason to delay the execution of the warrant until the 24th was, that was the best way to achieve your objective of keeping Jaggi Singh off of campus when it really mattered, which was on November 25th, is that a fair statement?
>
> A: To a degree. I just want to qualify that, is that as I've indicated, this was my objective. And that objective was based on the fact that I was concerned that Jaggi Singh would -
>
> Q: I'm sorry.
>
> A: – would lead others to serious confrontation.

I am satisfied that S/Sgt. Plante was sincere in his belief that the morning of November 24 was the most suitable time for Mr. Singh's arrest.

S/Sgt. Plante was advised that the VPD had Mr. Singh under surveillance and that they would make the arrest when requested by S/Sgt. Plante. He alerted Cst. Lee and told him to enter the warrant on the CPIC (Canadian Police Information Centre) database on the morning of November 24. The warrant was not to be entered until 7:00 a.m. so that an "unknowing" police officer would not arrest Mr. Singh over the weekend. Cst. Lee made the CPIC entry as requested.

At about 11:00 a.m. on November 24, RCMP officers Cst. Thomas Howell, (now Cpl. Howell) and Cst. Michael Labadie, working as undercover officers out of the National Security Investigations Section, came to the UBC Detachment. They reported that the surveillance operation had lost track of Mr. Singh over the weekend but that he was in fact on campus at that time. S/Sgt. Plante was concerned. He felt that with Mr. Singh's leadership skills, a high profile arrest on campus might incite others who would not normally become emotionally involved. S/Sgt. Plante instructed the two officers, who were prepared to assist, that the arrest should be made on or off campus, but on campus only if it could be done in a secluded area where it would have no emotional impact on others. If it could not be carried out in either of those circumstances, the arrest was not to be made.

The arrest did in fact occur on campus at approximately 12:15 p.m. on November 24, but not in a secluded area as S/Sgt. Plante had directed.

17.6.2. The Witnesses

Eight witnesses gave evidence about the arrest. They were Mr. Singh; Robert M. Everton, an instructor and doctoral student at SFU who was on campus to participate in pre-APEC forums; Michelle E. Smith, an independent film maker present to capture protest actions on camera; Charity E. Mewburn, a graduate student; RCMP Cst. Howell, RCMP Cst. W. Paul Bambury, and RCMP Cst. Mitchell T. Rasche, all of the National Security Investigations Section; and RCMP Cst. J. Shane Tuckee, who was with the Crowd Control Unit.

Cst. Labadie was also on campus with the other officers. All of the officers were out of uniform, wearing clothes that allowed them to blend in with the crowd.

17.6.3. How the Arrest Took Place

Although the central facts of the arrest are not in dispute, there are some differences in detail.

Mr. Singh had left Brock Hall, where he had been participating in pre-APEC events, and walked across a pedestrian mall toward the Student Union Building, a short distance away. Csts. Howell, Rasche, Bambury and Tuckee were outside the Student Union Building and recognized Mr. Singh as he approached. Cst. Labadie was also present but behind Mr. Singh. The officers concluded that this was their opportunity to make the arrest in a setting that they thought would comply with their instructions from S/Sgt. Plante. Cst. Tuckee said he and Cst. Bambury discussed the possibility of arresting Mr. Singh right away as it looked as though they could do so "without any fuss or muss." Cst. Rasche said he was not involved in those discussions and was asked about the plan to arrest Mr. Singh:

Q: And did it occur to you that you might just simply go up to Jaggi and say, "We have a warrant for your arrest. It's for common assault. Will you come with us?" Did that ever occur to you?

A: No.

Q: So what was on your mind was you had to grab him as quickly as possible, and get him out of there as quickly as possible; is that right?

A: The events just unfolded as they did. There was no game plan made.

Cst. Tuckee instructed that one officer leave to get a car and Cst. Labadie did that. Cst. Tuckee then approached Mr. Singh with the other officers and initiated contact by asking him when the next forum was to be held that day on campus. Almost simultaneously, Cst. Bambury called out Mr. Singh's name and told him that he was under arrest. By this time, Mr. Singh was surrounded by Csts. Tuckee, Bambury, Howell and Rasche. Csts. Bambury and Tuckee took hold of Mr. Singh to make the arrest. Mr. Singh resisted their efforts by pulling away but had no chance of escape with the four officers surrounding him. A tussle ensued. Mr. Singh said he was violently pushed to the ground. Mr. Everton described Mr. Singh as having been tackled to the ground. The officers said that Mr. Singh was not thrown to the ground but that Cst. Tuckee and Mr. Singh fell to the ground as they were pushing and pulling on each other. Cst. Tuckee ended up on top of Mr. Singh, on the ground, with Cst. Bambury immediately at his side to assist.

Mr. Singh was vocal in his protest against what was happening to him. I believe Ms. Smith when she said that Mr. Singh called out "help me, help me, my name is Jaggi Singh. This is Canada, I have not done anything wrong."

I believe that, as he said he did, Cst. Howell took out his police badge and made some reference to Mr. Singh's *Charter* rights. I also believe that, in the confusion, Mr. Singh neither saw the badge nor heard what Cst. Howell was saying.

Other officers assisted in handcuffing Mr. Singh. That was accomplished with his hands behind his back while he lay face down on the pavement. While this was occurring, the officers were concerned about the attention that Mr. Singh's calls for help might attract. Cst. Tuckee explained that concern and what he did about it:

> My main concern at that point was people hearing him scream. Of course there's hundreds of students around, there's three or four policemen standing there making an arrest, a legal arrest, and my concern, of course, is the crowd is going to come over and get involved in it, and I've seen situations where its not a very pretty sight. So, at that point, I put my hand over his mouth, not his nostrils, allowing him to breathe, but I put my hand over his mouth so he could no longer scream. He was subsequently handcuffed. A police car arrived on the scene within seconds and he was placed in the back of the police car and the police car left the scene.

I accept that this is what occurred, except that Cst. Tuckee's suggestion that Mr. Singh was "placed" in the car does not capture the drama of the moment.

17.6.4. Leaving the Scene

Within seconds of Mr. Singh being handcuffed and restrained in his attempt to attract attention, an unmarked, two-door police car drove up in front of the Student Union Building. I accept Mr. Everton's explanation of what then occurred:

> A car came rushing up from my left, where the parking lot was, onto the sidewalk; very quickly came to an abrupt stop. The doors were opened--during the time that Jaggi was being thrown in, I was again having an interaction with the two that were detaining me. And then as I looked--turned my attention back again to the vehicle, the doors were being closed. And it sped off at high speed.

Cst. Bambury's explanation of what occurred was quite similar:

> Q: What happened after the point when -- when Mr. Singh was handcuffed?
>
> A: Cst. Labadee came in his car, he drove it up on the--on the concourse and initially we all sort of jumped back because he came up so close to us. So, it was a matter of maybe three feet. He roared up, came to a stop, leaped out of the car, flung the driver's seat forward and I believe it was Constable Rasche and Constable Tuckee, picked Jaggi up by the upper arms, lifted him up and propelled him into the car.
>
> Q: Okay, And when he was propelled into the car, what position did he finish up in?
>
> A: I didn't see that part of it, quite frankly. I was--I was talking--this whole thing probably took less than thirty seconds.

To say that Mr. Singh was "thrown" into the car is a fair and reasonable assessment of what occurred. The objective of the officers was to get him into the car and leave without delay. I am satisfied that he was thrown onto the rear floor, face down, with his hands cuffed behind his back, and that the car sped off at a high rate of speed. Although the officers, in their haste, may well not have realized what had happened to Mr. Singh as he was propelled into the vehicle, I reject Cst. Howell's suggestion that he could have fallen into the foot area of the rear floor, belly and face down, simply because of the "way we were driving."

Cst. Labadie was the driver. Cst. Howell jumped into the front passenger seat while Mr. Singh was being propelled into the back. Cst. Tuckee estimated that, from the moment he initially spoke to Mr. Singh until he was placed in the car, approximately 30 seconds had elapsed, but he acknowledged it could have been a minute or a minute and a half. It was Mr. Singh's view that the arrest occurred in less than one minute and I believe he was correct in that assessment.

Cst. Howell said that, from a police perspective, the arrest was "well executed." Cst. Tuckee made it clear in his evidence that he shared that view:

> From a police standpoint and from a police perspective, it was an excellent arrest. There was no injuries to anybody, there was no crowd that formed, very minimal amount of force was used, just enough as necessary to keep him from escaping lawful custody. And tactically, it was a great arrest.

Cst. Howell said the reason for the speedy getaway was to leave before a crowd formed. Once the car was on Chancellor Boulevard, he directed Cst. Labadie to pull over and stop. He realized that Mr. Singh was in an uncomfortable position, face down on the floor, and he said there was no way he was going to allow him to remain in that position. Cst. Howell got out of the car, put Mr. Singh on the back seat in a sitting position and then got in and sat beside him. He said he wanted to calm Mr. Singh down and, to assist him, he loosened the handcuffs. In response to Mr. Singh, both Csts. Howell and Labadie showed their police badges and personal identification. Cst. Howell explained that the arrest was made pursuant to a warrant and when Mr. Singh asked, the warrant was shown to him. He told Mr. Singh they were on their way to the UBC Detachment and that he could speak to

S/Sgt. Plante about the warrant. When Mr. Singh saw the name Goodrich in the warrant, he did not know who the man was, and it was not until some time later when he was in jail at Richmond that he even recalled the megaphone incident of November 7.

Mr. Singh agreed with Cst. Howell's evidence as to what happened when the car stopped. He said, in a widely distributed e-mail written on November 28, that "the two plainclothes men in the car were suddenly nice to me." He said that, sometime during the ride, his rights were read to him. Cst. Howell acknowledged that the *Charter* warnings had to be repeated because he was satisfied Mr. Singh had not heard what was said at the scene during the struggle.

17.6.5. At UBC Detachment

Mr. Singh was taken to the UBC Detachment where he was to be processed through the usual booking procedures, including a search of his person, before being moved to Richmond for his first court appearance.

As a result of the observations of witnesses Everton, Smith, Mewburn and perhaps others, word of Mr. Singh's arrest spread on campus. A large group of protesters went to the UBC Detachment office to learn the details. With the crowd growing and the possibility of an emotional scene developing, S/Sgt. Plante directed Cst. Lee and Cst. Mark Semeins to take Mr. Singh immediately to the Richmond Detachment. S/Sgt. Plante believed that if Mr. Singh were gone, the students would likely disperse. His instructions were followed and Cst. Lee was present in court that afternoon when Mr. Singh was brought before the presiding Provincial Court Judge.

17.7. The Undertaking

As ordered by the Provincial Court Judge, and as a condition of his release from custody, Mr. Singh signed an undertaking:

1. to have no contact, directly or indirectly, with Cst. David Goodrich; and

2. not to be found in the University Endowment Lands, British Columbia.

17.8. The Assault Charge

The undertaking noted that he stood charged with the November 7 assault of Mr. Goodrich, contrary to section 266 of the *Criminal Code.*

His case was adjourned until December 8, 1997. It never did come to trial because, on January 7, 1999, Mr. Goodrich wrote to Crown Counsel asking that the charge be dropped as he was no longer employed at UBC and his further involvement in the matter could pose a problem with respect to future employment. He said he had suffered no long term effects from the incident but did not forgive Mr. Singh for what he had done.

17.9. The Charge Screening Process

An assessment of police conduct in these circumstances, particularly in respect of the *Charter*, requires an understanding of the function and purpose of the charge screening process in British Columbia and the responsibility of the police in relation to it.

Typically, in a Report to Crown Counsel, a police officer summarizes the results of an investigation, attaches copies of witness statements, and recommends that one or more charges be laid.

A police officer's duty, in presenting the Report to Crown Counsel for charge approval, is to accurately present the full case to the Crown so that the Crown can make an appropriate decision. The law is clear that it is improper for a police officer to intentionally mislead or withhold relevant information from a judicial officer: *R. v. Donaldson* (1990), 58 C.C.C. (3d) 294 (B.C.C.A.); *R. v. Silverstone* (1991), 66 C.C.C. (3d) 125 (B.C.C.A.).

If a police officer has met that responsibility to present a case accurately and fully to the Crown, the officer's personal motivation is irrelevant. The criminal justice system could not function effectively if police were legally required to weigh their motivations for recommending charges and seeking conditions. Police are not trained, and should not be required, to balance their personal motivations against an accused's rights. Requiring them to do so could result in significant adverse impact to the public interest because police, despite compelling evidence of an offence, might choose to err on the side of not recommending charges in situations where they are personally biased against an accused, to avoid criticism for making "improperly" motivated decisions.

It is Crown Counsel's responsibility to review the report, obtain further information if necessary, and then decide whether the recommended charge, or any other, will be laid. In making that decision the Crown, at least in British Columbia, must consider, firstly, whether there is a substantial likelihood of conviction and, secondly, whether laying charges would be in the public interest.

The decision to issue a warrant for arrest, as opposed to a summons to appear in court, is for the Justice of the Peace to make. Police may ask for a warrant, but it is the Justice of the Peace, not the police officer or Crown Counsel, who decides whether a warrant is justified. Section 512 of the *Criminal Code* says that a Justice of the Peace may issue a warrant if he or she has reasonable and probable grounds to believe that it is necessary in the public interest to do so.

At a bail hearing, section 515 of the *Criminal Code* authorizes the judge to do any of a number of things, including ordering that the person be released after giving an undertaking on whatever conditions the judge directs. It is the judge who decides what conditions, if any, should be imposed. In the absence of evidence that a police officer deliberately misled or withheld information from Crown Counsel or the judge, the officer cannot be held accountable for the Provincial Court Judge's decision to impose conditions, much less the nature of those conditions.

The separation of the investigatory function from the prosecutorial and judicial roles played by Crown Counsel, the Justice of the Peace and the Provincial Court Judge acts as a procedural safeguard against police abuse.

The actions which allegedly breached Mr. Singh's *Charter* rights were taken by Crown Counsel, the Justice of the Peace and the Provincial Court Judge, and the police cannot be held responsible for them, provided they have fully and accurately disclosed the relevant facts. It follows that I have no basis, at least so far as the *Charter* is concerned, for conducting a general inquiry into the RCMP's motivation, in the absence of evidence that they failed to make the required disclosure.

However, as I will discuss below, I am satisfied that I may consider such motivation when assessing RCMP conduct against the appropriateness standard.

17.10. The Issues

In my view, the issues I must now address are:

1. whether there was a sufficient basis to charge Mr. Singh;
2. whether that the decision to seek a warrant and "no contact" and "no go" conditions was abusive in the circumstances;
3. whether that the timing of Mr. Singh's arrest was intended to ensure that he would be absent from UBC on November 25; and
4. whether that the manner of Mr. Singh's arrest was "shockingly disproportionate to the circumstances."

My Terms of Reference require me to assess the RCMP conduct at issue here against both the *Charter* and the standard of appropriateness.

17.11. Sufficient Basis to Charge

The complainants allege that the decision to charge was ill-founded and intended simply to prevent Mr. Singh from protesting.

Commission Counsel submitted that I must determine:

- whether the RCMP had reasonable grounds to recommend a charge of assault against Mr. Singh and whether they did so appropriately; and
- whether Mr. Goodrich's account of the event to the RCMP could reasonably lead to the inference that Mr. Singh hurt him deliberately.

In contrast, counsel for the 44 RCMP officers submitted that to address these issues would amount to a review of Crown Counsel's decision to approve the charge.

In my view, I do not need to resolve this dispute. Even assuming that Commission Counsel is correct, I am satisfied that the RCMP had an evidentiary basis, albeit a very slim one, to recommend a charge of assault. Mr. Singh spoke loudly through a megaphone close to Mr. Goodrich's ear. Mr. Goodrich believed, apparently because of Mr. Singh's subsequent demeanour, that the act was intentional. Mr. Goodrich returned to the UBC Detachment three days after the event and asked if charges could be laid. He then sought medical attention and was referred to a specialist.

The *Criminal Code* provides:

> 265(1) A person commits an assault when
>
> (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly; . . . .

I am satisfied that yelling through a megaphone into another person's ear may constitute an assault within the meaning of section 265(1)(a). In *R. v. Cheadle* (1992), 82 Man. R. (2d) 265 (Q.B.), on reasonably similar facts, the court upheld a conviction where the accused had repeatedly blown a whistle in the ear of a police officer from a distance of about nine inches. Although the evidence of intent on the part of Mr. Singh to assault Mr. Goodrich was weak, I conclude that Mr. Goodrich may have suffered some, albeit minimal, physical consequences and that he believed Mr. Singh's act was intentional. Even if the RCMP had investigated more thoroughly, and other witnesses had stated that they did not believe that the act was intentional, the RCMP would nevertheless have been justified in seeking charge approval and leaving the matter of intent to Crown Counsel and the trial judge. In other words, the inference that Mr. Singh's act was intentional was available for Mr. Goodrich and the RCMP to draw. Although another police officer may have exercised that discretion differently, a sufficient basis did exist for the RCMP to initiate the charge screening process.

17.12. The Decision to Seek a Warrant and Conditions

The complainants allege that the decision to seek a warrant with "no contact" and "no go" conditions was abusive in the circumstances.

In the Report to Crown Counsel, the RCMP recommended that a warrant be issued for Mr. Singh's arrest and that conditions be imposed on his release which would prohibit him from having any contact with Mr. Goodrich or being at UBC. I will assess the RCMP recommendations and the motivation underlying them against, firstly, the *Charter* and secondly, the "appropriateness" standard.

17.12.1. Adequacy of Disclosure

As I made clear in my discussion of the charge screening process, one of the issues for my determination in relation to the *Charter* is whether the RCMP fully and accurately disclosed to the Crown the facts surrounding the alleged offence and their reasons for making the recommendations.

Commission Counsel and Complainants' counsel both cited *Collins* (see Chapter 15) for the proposition that conditions of release should not unjustifiably infringe upon *Charter* rights. In that case, the court set out principles to guide a judge in imposing bail conditions. Although these principles clearly apply to the imposition of conditions by a court, they are not relevant to the recommendations made by the RCMP to Crown Counsel. The real issue is the adequacy of the RCMP disclosure.

I am satisfied that S/Sgt. Plante revealed the primary reason for requesting an arrest warrant and the conditions of release when he said that it was done with a view to "eliminating some of the more high profile members of APEC Alert from the UBC area or at least from Dr. Piper's residence."

It is my firm belief that S/Sgt. Plante's motive in taking the November 7 incident forward to Crown Counsel with the request for an arrest warrant and conditions, was solely to eliminate from campus, on November 25, a rabble-rousing, vocal, difficult, annoying and, at times, unpleasant personality with leadership and organizational abilities, whose absence from campus on November 25 was bound to ease the tensions that S/Sgt. Plante correctly predicted would arise that day between protesters and police. While S/Sgt. Plante was insistent that he was motivated by a desire to avoid a violent confrontation between police and protesters and that his request was therefore justified, there was no objective evidentiary basis for his conclusion that Mr. Singh was himself a man of violence or that he aimed to incite others to violence.

Reference has been made to:

1. S/Sgt. Plante's appreciation that the alleged assault was a "one" on a scale of 10;
2. his objective, formulated by November 13, to "break the back" of APEC Alert by eliminating Mr. Singh from campus on the day of the leaders' meeting;
3. the fact that, despite an insufficient evidentiary basis for such a conclusion, S/Sgt. Plante concluded that Mr. Singh would promote "violent confrontation"; and
4. the fact that S/Sgt. Plante gave no consideration to Mr. Singh's rights.

Although S/Sgt. Plante said he was concerned that Mr. Singh might commit another assault, I do not believe that S/Sgt. Plante sought the warrant and conditions in order to ensure Mr. Goodrich's safety. In my view, although the alleged assault may have been "chargeworthy," S/Sgt. Plante's explanation for why he sought the conditions was premised upon a highly speculative concern that Mr. Singh's actions might jeopardize the safety of the Internationally Protected Persons. There was simply no evidence that Mr. Singh would initiate violent confrontations.

Furthermore, I believe the evidence reviewed earlier in this chapter makes it quite clear that S/Sgt. Plante's real concern was that members of APEC Alert, a group which he believed was led by Mr. Singh, appeared to have been involved in unlawful conduct in the past and had stated their willingness to be arrested, or, in other words, to break the law. S/Sgt. Plante truly believed that eliminating Mr. Singh might "break the back" of the group and eliminate any potential threat it posed.

I do not believe that mere membership in a group, some of whose members may have broken the law or may intend to break the law, justifies overriding a person's *Charter* rights. The only possibly illegal conduct by Mr. Singh identified in the Report to Crown Counsel was his presence at the ball hockey game on Dr. Piper's private driveway on October 22. Nevertheless, the Report to Crown Counsel contained the following, highly speculative paragraph:

> The accused should not be able to continuously cross the line from peaceful protesting to confrontational and possibly risking further injury to those who are present to support peaceful protests. If such actions persist, it could jeopardize the safety of the Internationally Protected Persons due to arrive and to those individuals targeted by the protest.

In my view, Mr. Singh's participation in the ball hockey games, when combined with the alleged assault of Mr. Goodrich, which S/Sgt. Plante conceded was a minor assault, was insufficient to justify the conclusion that his conduct might endanger the Internationally Protected Persons and that, therefore, he needed to be removed from campus.

However, I am not prepared to find that S/Sgt. Plante's conduct was inconsistent with the *Charter*. He simply forwarded a report to Crown Counsel who sought the warrant from a Justice of the Peace and the conditions which were imposed by a Provincial Court Judge.

Although S/Sgt. Plante's motivations may appear unseemly, he fully disclosed those motivations to Crown Counsel. Further, although his assertions that Mr. Singh would be involved in further "confrontations" with Mr. Goodrich and that he needed to be prevented from "continuously [crossing] the line" and, perhaps, jeopardizing the safety of the Internationally Protected Persons were highly speculative, the speculative nature of those assertions was self-evident.

Therefore, I simply cannot conclude that S/Sgt. Plante failed to make full disclosure or that his conduct was inconsistent with the *Charter*. If there was any state action which was inconsistent with the *Charter*, it was not the action of S/Sgt. Plante. I am not prepared to, and cannot, question the decisions made by Crown Counsel, the Justice of the Peace and the Provincial Court Judge. Accordingly, whatever I might think of S/Sgt. Plante's motivations, they are not, in the circumstances, relevant to the issue of whether his conduct was inconsistent with the *Charter*.

Having so concluded, I must nevertheless go on to consider whether S/Sgt. Plante's conduct was "appropriate to the circumstances" and in this context I am satisfied that I am entitled to evaluate his motivations.

17.12.2. Recommendation was Inappropriate

Unquestionably, the RCMP's motive in recommending the charge against Mr. Singh, as well as the warrant and release conditions, was to have him removed from campus on the day of the leaders' meeting. I am satisfied that S/Sgt. Plante believed that this purpose was proper and appropriate. In that sense, he acted in good faith. In my judgment, however, he was terribly wrong in that conclusion. Seeking Mr. Singh's elimination from campus for the reasons he did is highly objectionable in a society that promotes *Charter* values. The fact that S/Sgt. Plante acted in good faith does not convert what was otherwise inappropriate conduct into conduct appropriate to the circumstances.

Counsel for the 44 RCMP officers referred to two reasons advanced by S/Sgt. Plante for seeking the conditions that he did. First:

> The conditions imposed on Mr. Singh are ordinary conditions to protect the victim of an assault. Since Mr. Singh had assaulted Mr. Goodrich, there could be no criticism for recommending these conditions. Although U.B.C. is a large area, Mr. Goodrich's duties encompassed that entire area. More importantly, the nature of Mr. Goodrich's duties - security generally, and dealing with illegal protests in particular - were likely to bring him into contact with Mr. Singh.

I do not agree. Mr. Goodrich was in need of no protection from Mr. Singh. Mr. Goodrich was a trained security guard. Mr. Singh did not even know who he was until after his arrest on November 24. It borders on the ludicrous to suggest that Mr. Goodrich, trained in security work, including personal defence procedures, needed protection from a man with no record of assault or violent behaviour, and whose alleged assault, was very narrowly even worthy of a charge.

The second reason advanced by counsel was S/Sgt. Plante's belief that Mr. Singh intended to promote confrontation between the police and the people S/Sgt. Plante believed Mr. Singh was leading. In response to a question about the appropriateness of this reason, counsel for the officers said:

> If there are two proposed arguments in support of a Court order, the order is not refused because one reason is correct, and the other is incorrect. Since there were clearly proper reasons in addition to the controversial reason, then it would still be appropriate to impose an area restriction whatever the status of the controversial reason. The area restriction could be fully justified on the basis of the concern that Mr. Singh would come into confrontation with Mr. Goodrich. The additional, broader concern was, in a sense, surplusage, which could not serve to nullify the proper concerns.

S/Sgt. Plante's second reason for requesting the area restriction was not surplusage. It was *the* reason. In my opinion, Complainants' counsel made an effective response to that reasoning with which I agree:

> Now, the--on the recommendations to the no-go, Mr. Macintosh wants to say, well the no-go with respect to Mr. Goodrich is entirely appropriate, because he was--there was a sort of a direct connection between the charge of assaulting Mr. Goodrich and the no-go, vis-a-vis Mr. Goodrich. Well, there may have been a--a direct connection

> there, but that doesn't mean it was legitimate, because Mr. Goodrich is--is a--is a person who's a security guard and more than capable of taking care of himself. And more importantly, Mr. Goodrich didn't need the no-go. And if anybody had asked him, he would have said I don't need it, I'm not afraid of Jaggi Singh. Mr. Macintosh then goes on to say that the no-go to all of UBC was just surplusage, just surplusage. And that the--because so long as Mr. Goodrich was going to be at the campus, he would have been caught one way or the other. Well, it wasn't surplusage, it was the reason for everything. The no-go to UBC was the reason that they pursued the charge against Mr.--Mr. Singh. It was the reason for asking for a warrant so that they could have conditions. And the main reason for the conditions was in order to prevent Mr. Singh from being on campus. And so it's not surplusage.

Further, counsel for the 44 RCMP officers said that S/Sgt. Plante was clear and candid in stating to Crown Counsel "his secondary reason for requesting an area restriction against Mr. Singh." If the Crown had found the reasons for the restrictions insufficient, he would not have applied for them, counsel argued, and if the Provincial Court Judge had not believed the conditions were appropriate on the facts as a whole, he would not have imposed them.

I must balance that argument against the following from the closing submissions of Complainants' counsel:

> If the Commissioner concludes that the real purpose, or one of the purposes, for the police asking for an assault charge to be laid was to attempt to have Jaggi off campus and in custody on November 25, 1997, then the RCMP acted improperly. To pursue criminal charges for such a purpose is a misuse of police discretion and an attempt to abuse the process of the Courts, which offends Section 7 of the Charter and its guarantee that security of the person not be deprived except in accordance with the principles of fundamental justice.
>
> It is submitted that the Commissioner can come to no other reasonable conclusion than the reason for the warrant and the no-go was to ensure that Singh was not on campus during the AELM, not because he was a threat to Goodrich, and not even because he was a threat to any other person, but simply because he would lead the anti-APEC protest. The warrant and no-go were certainly the primary reason that the RCMP pursued the charge against Singh.
>
> Let there be no mistake: from the perspective of the police, there can be little dispute but that Jaggi Singh was very, very, annoying. His frequent questioning of their authority, his open distrust of them, his vocal challenges of their motivations, his demeanor, his strong and defiant language, all contributed to make him a thorn in their side. The colossal error that the RCMP made was in taking the giant leap from assessing Singh to be a nuisance from a police perspective, to taking steps to eliminate that nuisance from the APEC picture. What they failed to recognize in

> taking those steps to neutralize Singh was that their legal mandate did not extend to interfering with his liberty interests for the purpose of making APEC run more smoothly, or the job of the police easier, or foreign dictators and Canadian politicians happier. However much an annoyance and nuisance Singh may have been to the RCMP, no matter how intense the police desire for a more amiable protest leader, he had a constitutional right to operate freely and without RCMP interference, within the limits of the law. It was not only Jaggi Singh's liberty interests that were infringed by the police actions. The RCMP plan to remove him from the picture on November 25th was designed both to silence him and to "break the back" of the protest activities that he was organizing and leading. The damage intended to be done by the RCMP to rights of free speech and assembly protected by Section 2 of the Charter, the rights of both Singh and of members of his group, was significant.

I agree with Commission Counsel that the reference to the RCMP can only be to S/Sgt. Plante who accepted responsibility for the decision to seek charges. Further, there is no evidence that any officer outside the UBC Detachment had any involvement in that decision.

Counsel for the 44 RCMP officers spoke further to this matter on the closing day of the hearing. In his presentation and in discussion with me he zeroed in on what he believed to be the question I must answer. It is a lengthy discussion and exchange but it focuses the issue that I must answer:

> MR. KEVIN WOODALL: . . . . The question is though, from Staff Sgt. Plante's point of view, did he commit misconduct by having the matter submitted to a senior Member of the Ministry of Attorney General to ask whether it was legally defensible. And in so doing, what his job was--twofold, one to provide the evidence that he had, to Crown Counsel without concealing material evidence or fabricating evidence. And second and most important, it was very important for Staff Sgt. Plante to be candid about what - about what was Jaggi Singh's role in the - in APEC Alert, that he was a - a big leader on campus. And that he wanted him off campus, because he wanted him off campus on the 25th. If Staff Sgt. Plante had concealed either of those facts, he would very properly be subject of - of - of criticism. But he made a report to Crown Counsel, in which he detailed all of Jaggi Singh's involvement in APEC Alert. He detailed the fact that Jaggi Singh was a leader of APEC Alert, and he said explicitly that he wanted Jaggi Singh off campus, because he was afraid of what he would do on November 25th.
>
> MR. COMMISSIONER: But the - did the intelligence point to the fact that he would be a threat if he was on campus?
>
> MR. KEVIN WOODALL: The TAG reports did not. But there are two answers to that question. First is this. Mr. - Staff Sgt. Plante had two reasons for wanting to propose the no contact order and the no - and the no-go order. One of the reasons was the

narrow reason that Jaggi Singh had assaulted Mr. Goodrich. And that reason alone, in my submission, would be a sufficient reason for keeping him off campus. In addition, there were the larger reasons--

MR. COMMISSIONER: Well, I have a lot of problems with that, but that's for me to wrestle with of course–

MR. KEVIN WOODALL: Yes.

MR. COMMISSIONER: But I really do.

MR. KEVIN WOODALL: Yes I - and the - and there's no doubt in the world, that those are very debatable questions. There's no doubt in the world, that reasonable people can differ whether he should have been kept off campus, and whether - even if there's legal authority, whether it was prudent to do so.

MR. COMMISSIONER: Well, somebody who is assessed as not having violent intentions to be wanted to be kept away from the scene of action, I have great difficulty accepting that that's the way you would deal with someone like that.

MR. KEVIN WOODALL: Well–

MR. COMMISSIONER: And not have them out there and let them do their thing, providing they stay within the law.

MR. KEVIN WOODALL: Right and - and I can't - can't disagree that that's a legitimate perspective. But what I ask you to do when you analyse this case is ask whether Staff Sgt. Plante committed misconduct in putting his case very candidly to Regional Crown Counsel, and letting Regional Crown Counsel decide. And then the - the actual decision of the con - of the conditions were imposed by a Judge. So again, a Judge decided whether or not to impose the conditions. And whether or not you agree with the decision that Regional Crown Counsel made or the Judge made, and I can see that there are lots of reasons for doubting them. When you're considering whether Staff Sgt. Plante misconducted himself, ask whether he did - whether it was misconduct to put these matters in the candid way he did, saying right up front, this guy's a leader of APEC Alert, I don't want him on campus, whether that was misconduct in so doing.

MR. COMMISSIONER: That's just not the way our system works.

MR. KEVIN WOODALL: Well the way our system works for the Police, Mr. Hughes, is that they are not legally trained. They may or may not - they - the - the view -

MR. COMMISSIONER: No, no wanting him off campus. Why should have he been wanted off campus?

MR. KEVIN WOODALL: He admitted - Staff Sgt. Plante made the assessment, and I submit it was a very realistic assessment, and I set out all the reasons in my - my submission for saying so; that while Jaggi Singh himself would not necessarily be violent in the sense of throwing rocks or using weapons, he was - he had the capacity and intention of inciting in - a - a large group of people to engage in a serious confrontation with the Police. That was Staff Sgt. Plante's assessment and I think that that is an assessment which is very capable of being accepted. And again--

MR. COMMISSIONER: But isn't the police force there to deal with the confrontation, if it comes?

MR. KEVIN WOODALL: Well, the police force is there to prevent reasonable apprehensions of the peace. That's one of - that's one of their duties. And it is a very common function of the police, in all sorts of circumstances, and the *Criminal Code* acknowledges this, that when you're imposing conditions, you impose them not merely to deal with what has happened in the past, but to prevent offences in the future. And if, while the matter's debatable, there's nothing wrong, in my submission, with Staff Sgt. Plante saying to the authorities, here's my case, you judge it from a legal point of view and you tell me whether I'm right or wrong. That's all - that's all he as a police officer can do.

MR. COMMISSIONER: Yes, but I guess my concern, and I'm going to be quiet because I'm taking up your time. But my concern goes back to the exercising of judgment to decide that that's the course this matter should have taken.

MR. KEVIN WOODALL: Well, there's no doubt that that - that that is a very debatable issue, and you - you'll make your recommendations. But I ask you simply to focus on whether Staff Sgt. Plante committed misconduct in his particular role in it.

My Terms of Reference make it quite clear that the question I must answer is not simply whether S/Sgt. Plante committed misconduct in putting his case candidly to Crown Counsel for resolution. Rather, I must decide whether it was "appropriate" for S/Sgt. Plante to put forward a case for consideration by Crown Counsel when his motive for doing so, in respect of an extremely minor assault, was to eliminate Mr. Singh from campus on November 25 and "break the back" of APEC Alert, thereby making the job of providing security easier than it likely would have been had Mr. Singh been present to give leadership to the protest movement. That was S/Sgt. Plante's motive. Mr. Goodrich was in no danger whatsoever from Mr. Singh's presence on campus. Mr. Singh had no record of violence in his background and S/Sgt. Plante's reasons for citing both Mr. Singh's ability to incite violence by his followers and the likelihood of him doing so were fanciful and nothing more.

The police strength on campus on November 25 was more than adequate to take care of any unlawful conduct on the part of Mr. Singh and his followers. Not being inside the planning loop, perhaps S/Sgt. Plante did not know of the array of security forces available to the RCMP. If S/Sgt. Plante was correct in concluding that it was necessary to eliminate

Mr. Singh from campus, a conclusion with which I am in complete disagreement, it would not say much about the capability of our national police force.

For all of these reasons, I conclude that S/Sgt. Plante's conduct was not appropriate to the circumstances. He was motivated to ensure that Mr. Singh, who was a vocal, difficult and at times an annoying personality, did not create confrontational situations with which the RCMP would have to deal in addition to their general duty to ensure the security of the leaders at their meeting on campus. Although the fact that he fully disclosed his motivations and speculative concerns to Crown Counsel has led me to conclude that his conduct was not inconsistent with the *Charter*, I believe his motivations for wanting to keep Mr. Singh away from UBC cannot be condoned.

It will be noted that counsel for the 44 RCMP officers acknowledged that the Threat Assessment Group reports did not point to the fact that Mr. Singh would be a threat if he was on campus. In a note prepared and sent by S/Sgt. Plante to Cpl. Duffield on November 12, S/Sgt. Plante acknowledged that he was aware from contact with the National Security Intelligence Service that "APEC Alert is committed to non-violent acts." He said that, during a phone call from Steph Ponich of National Security Intelligence Service, he had tried to determine what the mood would be if Mr. Singh was charged. He advised Cpl. Duffield in his note to her:

> It would seem that the group may consider him a martyr and they may gain some support. On the other hand, considering that they are resorting to non violent acts and seemingly are not overly interested in being arrested considering that some of the group are graduate students and would seemingly have lots to lose, the question must be asked, "what would/could they do if SINGH was arrested."

Further, S/Sgt. Plante was in fairly constant contact with Cst. Paul Bambury and he knew that Cst. Bambury's APEC assignment related to the gathering of intelligence. It was Cst. Bambury's duty to identify any potential threats against the Government of Canada and specifically the Prime Minister. Each officer knew the other's view of Mr. Singh. Cst. Bambury's opinion, based on his intelligence gathering, was that Mr. Singh posed a minimal threat. He said the officers working in intelligence knew that there would be large numbers of demonstrators but they felt that Mr. Singh's ability to motivate them or direct them was negligible. He said that he and S/Sgt. Plante had a difference of opinion about Mr. Singh in that respect. He said he was aware that S/Sgt. Plante did not want Mr. Singh on campus at all. He said that Mr. Singh's attendance on campus was irrelevant to him because his presence on campus would not jeopardize anyone that Cst. Bambury had to protect, and that included the Prime Minister of Canada.

S/Sgt. Plante acknowledged that it was after he sent out his note of November 12 to Cst. Duffield that he decided that Mr. Singh should be arrested. He was asked how he rationalized his knowledge that the protesters were resorting to non-violent acts with the necessity to get Mr. Singh out of the way when November 25 rolled around. He answered:

> A: Well, as I indicated, I was - my impression, my dealings with Mr. Singh, my belief was that he was not content, to let them be involved in non-violent situations. I thought he wanted to elevate the group to be involved in serious confrontation with the Police. I have my own definition of what violence is and perhaps that may be an issue that I should - would like to explain is that--
>
> Q: Well, if you want to, go ahead.
>
> A: Excuse me. I think there's varying degrees of violence. Violence, in my view, a minor level of violence is two people pushing each other. And that's really, I wanted to try and make sure that those types of situations were avoided.

So, to try to avoid incidents as minor as two people pushing each other, S/Sgt. Plante ignored police intelligence, ignored Mr. Singh's right to peaceful protest and freedom of expression and pursued his course to break the back of APEC Alert and eliminate Mr. Singh from campus. That evidence fortifies my opinion with respect to the motive that I am satisfied drove S/Sgt. Plante to pursue Mr. Singh's arrest.

All of this says a great deal about the planning and organizational structure put in place by the RCMP for the leaders' meeting on the campus. Here was an officer, dedicated to and sincere in his work, who had no involvement whatever with APEC until two months before its occurrence and never was in the planning loop. (He said he had never been to ACCO's office.) Yet, as head of the UBC Detachment, he had sole authority to address the Singh matter as he chose. Those who had been working and planning the event, the largest security operation in the history of the RCMP, had no knowledge of nor involvement in the entire Singh issue which, I believe, was a significant development in the security assignment resting with the RCMP that week.

17.13. Timing was Not Inappropriate

The complainants allege that the timing of the arrest (that is, the deferred execution of the warrant) was intended to ensure that Mr. Singh would be unable to attend UBC on November 25.

The fact that S/Sgt. Plante waited until November 24 to direct that the arrest occur does not, in my opinion, constitute a deferral of the execution of the warrant for an improper purpose. S/Sgt. Plante said he deferred the execution of the warrant because he was concerned that an arrest over the weekend might have an emotional impact on other protesters and heighten confrontations with police in the days preceding the leaders' meeting. In my view, S/Sgt. Plante satisfactorily explained his actions from the time he was notified on November 21 that the warrant had been issued until the morning of November 24. I am satisfied that he believed that his goal could best be achieved by entering the warrant into CPIC at 7:00 a.m. with the arrest to follow soon after.

Complainants' counsel also suggested that S/Sgt. Plante delayed the execution of the warrant to ensure that Mr. Singh's court appearance would be at the last possible moment. As I understand counsel's submission, there was no guarantee that a judge would impose the requested "no go" condition. Therefore, it was S/Sgt. Plante's intention to have him arrested at noon on November 24, and then bring him to the UBC Detachment and keep him there until it was too late in the day to get before a judge in Richmond. Mr. Singh would then have to remain in custody overnight until a court appearance the next morning. As a consequence, when APEC Alert actions began on campus on the morning of November 25, Mr. Singh would be either in jail or in court in Richmond. Counsel suggests that S/Sgt. Plante's plans went awry because of the student march on the UBC Detachment and, but for that unanticipated event, Mr. Singh would never have been before a judge until November 25.

S/Sgt. Plante rejected that proposition and said that his expectation had been that Mr. Singh would be arrested in the morning of November 24, before arriving on campus. The plan was to interview him and have him appear in court in Richmond that morning. He said:

> I had no way of, obviously, of controlling when he was to be arrested, or when he was arrested on the--on the 24th. But certainly there was no indication, no attempt on our part to restrict his appearance in Court in the afternoon session at Richmond.

I accept S/Sgt. Plante's evidence and reject the submission of counsel. As much as S/Sgt. Plante wanted to prevent Mr. Singh's presence on campus on November 25, which is quite another issue that has been addressed above, I do not attribute to him the underhanded conduct implicit in counsel's line of questioning. I believe that S/Sgt. Plante saw his objective of having Mr. Singh barred from campus on November 25 as best achievable by the process that he recommended to Crown Counsel and he never deviated from that. Had either Crown Counsel or the judge declined to do as S/Sgt. Plante had hoped, there is no reason whatsoever to believe that he would not have, in an honourable way, accepted his obligations as a sworn peace officer to uphold the law in the performance of his duties. I am satisfied that there was nothing inappropriate about the timing of Mr. Singh's arrest.

17.14. Manner of the Arrest

The complainants allege that the manner of the arrest was "shockingly disproportionate to the circumstances."

Csts. Howell and Tuckee believed the arrest of Mr. Singh was an excellent, well-executed arrest. In their closing submissions, however, Complainants' counsel expressed another view:

> While there may be circumstances where police must employ arrest techniques such as these because of serious public safety considerations, no factual basis supporting the need for such a shocking mode of arrest was established in the evidence.
>
> . . . the (mode of) arrest violated notions of decency and fundamental justice, and was totally unjustifiable.
>
> The circumstances of the arrest of Singh, the . . . grabbing of him from a pedestrian area near the Student Union Building by a group of undercover officers, the physical nature of the arrest, which brought police officers and Singh to the ground, notwithstanding the fact that Singh's resistance to the police was described by them as "minimal," the placing of a hand over Mr. Singh's mouth to prevent his screams attracting the attention of others, the shoving into the unmarked car, causing him to weep, and speeding away off of campus, were shockingly disproportionate to the circumstances and the alleged offence.

In my view, the fact that the arrest was effected by undercover officers, in a pedestrian area, whose vehicle quickly left the scene is, as a matter of law, not directly relevant to the issue I must address; namely; whether the RCMP used excessive force in making the arrest.

Mr. Singh had been charged with assault. A warrant had been issued for his arrest. The undercover officers were instructed to effect the arrest and, in order to avoid creating a confrontational scene, they thought it necessary to arrest Mr. Singh and remove him from campus quickly. Quite understandably, Mr. Singh resisted the arrest and force was used to restrain him. In their haste to leave campus, the officers unceremoniously threw Mr. Singh into the back of the vehicle and sped away. Once the vehicle was safely away, the officers helped Mr. Singh into a more comfortable position. He did not suffer any injuries.

Section 25(1) of the *Criminal Code* protects a peace officer who is required or authorized by law to do anything in the administration or enforcement of the law if the officer acts on reasonable grounds and does not use excessive force. The purpose of section 25(1) is twofold: it absolves of blame anyone who does something that he or she is authorized or required by law to do, and it empowers such person to use as much force as is necessary for the purpose of doing it: *Eccles v. Bourque et al.* (1973), 14 C.C.C. (2d) 279 (B.C.C.A.), aff'd (1974), 19 C.C.C. (2d) 129 (S.C.C.). The law is also clear that, in determining whether the force was necessary, the trier of fact must consider the circumstances as they existed when the force was used and also bear in mind that a peace officer need not measure the force used with exactitude: *R. v. Bottrell* (1981), 60 C.C.C. (2d) 211 (B.C.C.A.). Further, allowances must be made for the "exigencies of the moment," including the "aura of potential and unpredictable danger": *Anderson v. Port Moody (City) Police Department* (4 August 2000) New Westminster S016178 (S.C.).

Although the arrest was not made in a secluded area and the attention of those passing by was attracted by the commotion caused by Mr. Singh's vocal protests and the coming and going of the fast moving vehicle, it was not carried out in the presence of a crowd. I am satisfied that the officers believed that, by acting swiftly when the opportunity to make the arrest arose, the consequences of making the arrest where they did would be no different than if they adhered to S/Sgt.'s Plante's directive to choose a secluded area. With that belief, they had to act quickly and they were entitled to take reasonable steps to ensure they did not become embroiled in a potentially difficult and dangerous confrontation with bystanders. That potential was certainly present given the concerns expressed by Mr. Everton, Ms. Smith and Ms. Mewburn about what they had just witnessed. Fortunately, Mr. Singh did not suffer any injuries during the arrest and any discomfort he experienced during his removal from campus was short-lived.

In assessing whether the RCMP used excessive force, I am very conscious that I am looking at the matter with the benefit of hindsight and that the police were dealing with a vocal and resistive person in a setting where it could reasonably be expected that a crowd hostile to the officers could quickly gather.

Nevertheless, even though the officers were not required to measure the force used with exactitude, I cannot accept that it was either necessary or appropriate to propel Mr. Singh face first into the rear floor area of the vehicle, particularly given that his hands were cuffed behind his back and he was then well under the control of the four officers. It would have taken mere seconds to place Mr. Singh in an upright sitting position, without materially increasing the risk of confrontation with the others in the area.

In my view, tossing Mr. Singh into the vehicle was a spur of the moment decision made under stressful circumstances. Although he did not remain on the floor for long and suffered no lasting consequences, it was nevertheless in excess of the force required to accomplish the arrest and the RCMP officers should have recognized that such force was unnecessary. The propulsion of Mr. Singh into the vehicle, face first onto the floor, with his hands cuffed behind his back, crossed the line. It was not appropriate to the circumstances.

17.15. Conclusion

I am satisfied that the RCMP conduct reviewed in this chapter was consistent with respect for the *Charter*. I have found, however, that in the instances I have identified, not all of that conduct was "appropriate to the circumstances."

It is worth reiterating that S/Sgt. Plante was not inside the RCMP planning "loop" in preparation for the events that were to occur on campus November 25. He had only arrived at the UBC Detachment two months previously and found little or no communication link between the RCMP's APEC planning process and the UBC Detachment within whose jurisdiction the event was to occur. He took some positive steps to acquaint the UBC Detachment with what was taking place regarding the leaders' meeting. Despite the extreme sensitivity of the whole APEC planning operation, particularly as it pertained to the leaders' meeting to be held on campus, the events that gave rise to Mr. Singh's complaint were left solely to the judgment and decision of one

Staff Sergeant, to the exclusion of senior commissioned officers who held overall responsibility for security, and who had been working on the assignment, full time, for months and months. I am highly critical of a planning process that would allow events to evolve in such a manner.

18. COMPLAINT CATEGORY 6: MALMO-LEVINE ARREST

At a demonstration on campus on November 24, police moved forward to investigate a student climbing a flagpole. David Malmo-Levine was arrested when he tried to interfere with the police. The complaint is that RCMP members wrongfully arrested Mr. Malmo-Levine and in carrying out the arrest used excessive force on him and others and infringed his right of expression.

18.1. The Speak-Out at the Flagpole

At the time of this incident, about 4:15 p.m. to 4:30 p.m. on November 24, the security fence was in place. A few openings had been left to allow passage through, up to the 6:00 p.m. deadline, at which time the fence was to be sealed and the area secured. One of the openings in the fence was near the flagpole. It was just outside this opening where the main demonstration occurred at noon the next day. And it was through this opening, into the soon-to-be-secured area, that 40 to 50 people passed on their way from an APEC Alert teach-in at the Student Union Building to a speak-out that had been planned for the flagpole area. One of those who passed through the opening in the fence was Mr. Malmo-Levine.

At the speak-out, a megaphone was available and the first person to use it invited those who wanted to speak about APEC to come forward in turn and make use of the megaphone.

Many RCMP members were nearby. S/Sgt. Stewart said that some of the Quick Response Teams had been sent with instructions to walk through the secured area, once the openings in the fence had been closed, and make sure no one was left behind. Police dogs and their handlers were on hand to check such spaces as the piping tunnels. Between 20 and 30 police officers were present when the speak-out got underway.

Two or three speakers came forward and used the megaphone. The fourth speaker, Mr. Malmo-Levine, announced he would speak loudly and had no need of the megaphone.

18.2. The Flagpole Climber

About this time, the officers saw James Pond starting to climb up the flagpole above the heads of the crowd. Almost immediately, but individually, S/Sgt. Stewart, Insp. Killaly and Sgt. Ian Ferguson decided to go into the crowd to find out what was happening.

S/Sgt. Stewart emphasized that his concern was the potential difficulty in getting Mr. Pond down from the pole, should he decide to stay. After 6:00 p.m. the area around the flagpole would be sealed off and Mr. Pond would no longer have any right to be there. S/Sgt. Stewart said he assumed that Mr. Pond's intention was to go up the flagpole and stay there. He said: "[a]nd I know from experience, how difficult it is to get a person down from a single pole with nothing around it." He said he was not comfortable with the risk this would pose to the climber and to the officers who would have to deal with him. He testified that his intention in approaching Mr. Pond was not to arrest him, but to suggest that he climb the pole another time.

Sgt. Ferguson expressed similar motivation, as did Insp. Edwards, who was also present. For his part, Insp. Killaly said the flagpole was very slick and he got involved out of concern for Mr. Pond's safety.

A/Comm. Wayne Wawryk, in charge of International Liaison and Protective Policing for the RCMP at headquarters at Ottawa, testified that, with the flagpole area about to become secure, "it wasn't much of an option to let this person go all the way up the pole."

It was Sgt. Ferguson who reached Mr. Pond when he was about four feet off the ground. He took hold of Mr. Pond's foot and they spoke to one another. Soon Mr. Pond came down from the pole.

At the hearing, Mr. Pond said he was an experienced mountain and rock climber and was using appropriate equipment. He said his aim was simply to attach an anti-APEC flag to the pole over the Canadian flag and then come down, though during his conversation with the RCMP he never told them what his plan was. His questions to the RCMP were about whether he was going to be arrested.

Mr. Pond said that the officers he spoke with when he came down from the pole were polite but firm. He said he was told that, if he fell from the pole, his parents might hold the police responsible. He acknowledged to the police that he could understand that and packed up his equipment and left.

Mr. Pond did not file a complaint with this Commission, nor did anyone else file a complaint in respect of Mr. Pond's treatment by the RCMP. The B.C. Civil Liberties Association, however, did say in its closing submission that the reasons the police gave for intervening in Mr. Pond's efforts to climb the flagpole did not justify their actions. According to the Association, the RCMP were not acting in the lawful execution of their duty, and touching Mr. Pond's foot constituted a criminal assault. I do not agree. Rather, I accept the evidence of Insp. Ryan who viewed the video of what happened at the flagpole as Mr. Pond began his ascent and said: "[a]ny police officer observing this activity, I think has to investigate to see what is going on . . . . Police officers are compelled to investigate this kind of activity."

In the circumstances, it was entirely reasonable that the police would walk over and attempt to speak to Mr. Pond and to dissuade him from climbing the pole. Counsel for S/Sgt. Stewart and Sgt. McLaren relied on case law that establishes that, given the RCMP's statutory duty to preserve the peace, they may arrest for breach of the peace where the arresting officer reasonably and honestly believes that a breach of the peace is imminent.

It is not at all clear to me that Mr. Pond's conduct constituted a breach of the peace or that a breach of the peace was imminent. I do not need to pursue that issue, however, because I find that the police were entitled to act as they did on another basis. At common law, the principal duties of police officers are the preservation of the peace, the prevention of crime, and the protection of life and property: *R. v. Dedman*, [1985] 2 S.C.R. 2. I believe the RCMP were entitled to investigate Mr. Pond's actions and persuade him to climb down from the pole as a corollary of their duty to protect life and property.

In my view, the officers reasonably and honestly believed that Mr. Pond might try to remain atop the flagpole once the area was secured and they were entitled to take steps to prevent that. Given the RCMP's duty to protect life and property, I believe the RCMP would have been in neglect of their duties if they had not intervened.

18.3. Mr. Malmo-Levine

18.3.1. Obstructing police

While the three officers were moving to intervene with Mr. Pond as he began his climb up the flagpole, Mr. Malmo-Levine pushed his way in front, blocking S/Sgt. Stewart from reaching Mr. Pond and blocking Sgt. Ferguson with his arm to the officer's chest. S/Sgt. Stewart explained:

> . . . . Sergeant Ferguson still had hold of James Pond's foot, but he was reaching up and his arm was--was almost fully extended. I attempted to push, initially, the person I now know to be David Malmo-Levine, I did not know him then, out of the way.
>
> Q: Did you say anything to him?
>
> A: I believe I said, move out of the way, or move. He immediately resisted.
>
> Q: How did he resist?
>
> A: He took a firm position on the ground and my hand stopped moving. Normally when a person moves with you, your hand continues to move as they move away.
>
> Q: Okay. Did you form any opinion as to-as to what he was, apparently, about?
>
> A: Yes, I--I very quickly formed the opinion that it was his intent to prevent or obstruct us, and particularly myself and Sergeant Ferguson, from dealing with the person on the pole.
>
> Q: Yes.
>
> A: I attempted to move him away and told him to move out of the way or he would be arrested for obstruction. I spoke very closely to him. It was very--it was still somewhat loud and spoke right directly into his left ear. He continued to resist. He took a very

> firm position on the ground. He planted his feet, he locked his arms together, and he had no intention, in my mind, of moving.

Mr. Malmo-Levine refused to move and protested that it was his right to remain where he was: he said to S/Sgt. Stewart: “No way, fuck you.” Unquestionably, Mr. Malmo-Levine was physically obstructing the police as they attempted to carry out their responsibilities. They were therefore entitled to arrest him pursuant to section 129(a) of the *Criminal Code*. That section provides that a person commits an offence if he or she “resists or wilfully obstructs a public officer or police officer in the execution of his duty.”

Given that the RCMP were acting in the execution of their duty when they approached Mr. Pond, the officers were entitled to arrest anyone who wilfully obstructed them. The law is clear that a person who obstructs a police officer from performing his or her duty to prevent a reasonably apprehended threat to the preservation of peace commits an offence under section 129(a): *Abbey v. Dallin* (21 January 1991) Nanaimo SC9613 (S.C.); aff'd (1992), 20 B.C.A.C. 228. I have no doubt that it is also an offence to prevent an officer from acting to protect life or property.

On the final day of the hearing, counsel for S/Sgt. Stewart and Sgt. McLaren, addressing this issue and the criticism levelled during the hearing against the police intervention, said: “[a]t some point ... there's got to be some common sense brought to bear here too. . .”. I agreed with him then and I agree with him now. With the massive security assignment resting with the RCMP on campus the following day, not only does common sense indicate a clear obligation on the police to address what was unfolding before their eyes, but I go further and say that it would have been irresponsible for the police to do other than what they did. The complaint that Mr. Malmo-Levine's arrest was unlawful is unfounded.

18.3.2. Allegation of Excessive Force

The second element of the complaint is that excessive force was used in Mr. Malmo-Levine's arrest.

S/Sgt. Stewart tried to put an arm lock on Mr. Malmo-Levine but was unable to do so because Mr. Malmo-Levine had locked his hands together. At this point, Mr. Malmo-Levine called out to the crowd to lock their arms with one another and to move in and "hug."

S/Sgt. Stewart knew what was meant by a "hug." He described it as a technique used by protesters when police attempt to make an arrest. Protesters who wish to obstruct the police will close in and lock arms with each other to surround the police officers as they deal with the person being arrested. By simply standing still in that formation they can prevent the police officers from carrying out their duties. S/Sgt. Stewart said that, with Mr. Malmo-Levine continuing to vigorously push against him, he realized at that point that he was going to be mobbed and added:

> People began to put their hands on me, people began--one fellow had his hand on my jacket as he moved in front of me to stop me from moving, and we were still trying to move Mr. Malmo-Levine away from the pole, so that Sergeant Ferguson could deal with the climber. Mr. Malmo-Levine was resisting vigorously, and at that time, I realized that I was going to be somewhat surrounded and was concerned.

18.3.3. Pepper Spray was Reasonable

S/Sgt. Stewart said two or three males tried to physically pull him away. S/Sgt. Stewart explained what happened then:

> What I did, sir, was I drew my OC container, personal OC container, moved it down into the low ready position. Pushed David Malmo-Levine away from me and in an effort to stop his resistant behaviour, applied a short burst of OC spray; then turned to deal with the persons who had hold of me and fired approximately a one second burst of OC spray in their general area.

Q: Okay.

A: One of the person--all of the persons moved away, except one man with blonde hair, he moved away, came back at me a second time, moved forward again and grabbed my leg, my lower leg. I kicked out to kick him off my leg, he moved back and then began shouting at me. I gave him direct--verbal direction to back off, which he did. Malmo-Levine was taken away from the scene and other Members assisted in moving him away and we dealt with Mr.--the person we know as--as James Pond, who was climbing the pole.

Q: Was James Pond arrested?

A: No. sir, and neither would Mr. Malmo-Levine, if he had not have got in our way.

I accept all of the foregoing evidence of S/Sgt. Stewart. I believe his use of pepper spray on these two occasions was entirely reasonable given the dangerous situation in which he found himself. His version of the events is supported by other police officers, including Sgt. Ferguson and Cpl. Duffield, who said she had a concern about how she and her colleagues were going to be able to get the officers out of the crowd that was moving to the centre of the flagpole area where those officers were.

Speaking of the defensive actions taken by S/Sgt. Stewart, his counsel said:

> It is submitted that his actions were entirely in keeping with the use of force model and the underlying concepts as well as the provisions of the *Criminal Code* which entitle him, as a peace officer, to use reasonable force (section 25) and to use force to defend himself (section 34).

I agree.

18.3.4. The Arrest

The evidence of Mr. Malmo-Levine confirms the picture of his actions painted by S/Sgt. Stewart and other officers. He said that when he saw the police approaching he deliberately got in their way by placing himself between the police and the flagpole:

> When I learned that there was someone climbing the flagpole, at that point in time, I had come to the conclusion that running interference for that person would be a justifiable thing.
>
> Q: Sure. And interference in this situation, I understand, meant to you that you would, to a certain extent, block anyone seeing the climber setting about his business?
>
> A: Yes.
>
> Q: And particularly the police?
>
> A: Yes.

He acknowledged that S/Sgt. Stewart had tried to move him out of the way and that he resisted those efforts:

> I made it as difficult as possible for them to remove me from the area without being aggressive towards them. I dug in my heels when they pulled. I leaned the other way.

> I got in their way obviously and--when they were going after the flagpole climber and--and I held my ground.

Mr. Malmo-Levine acknowledged that he called in the crowd to "come in and hug."

Isabela Varela had been at the teach-in at the Student Union Building and walked to the flagpole with Mr. Malmo-Levine. She confirmed Mr. Malmo-Levine's evidence and much of what the police officers said. She said the linkage of arms, in which she took part, was suggested by Mr. Malmo-Levine as, she believed, a gesture to protect Mr. Malmo-Levine and Mr. Pond from the police. She said the police broke through the circle they had formed and the officer dealing with Mr. Malmo-Levine (S/Sgt. Stewart) pushed Mr. Malmo-Levine's head very roughly against the flagpole and then pressed his hand against Mr. Malmo-Levine's throat.

Ms. Varela said that it was possible that the physical contact between Mr. Malmo-Levine and the police began with the police attempting to pull Mr. Malmo-Levine away from the base of the flagpole. She said: "it may be that first they were trying to pull him and then his head got pushed against the pole." I am satisfied that that is what did occur. The police did not deliberately bang his head against the pole nor attack his throat. As Mr. Malmo-Levine resisted police efforts to move him aside and then restrain him and take him into custody, there was no avoiding physical contact. What Ms. Varela saw, happened in that context.

The position of the B.C. Civil Liberties Association was that the alleged contact between Mr. Malmo-Levine's head and the flagpole was caused by unjustifiable police conduct. The Association also concluded that the police used a front chokehold in arresting Mr. Malmo-Levine and that this also constituted objectionable police conduct. I agree with counsel for S/Sgt. Stewart and Sgt. McLaren that the Association based its conclusion about a chokehold on Ms. Varela's evidence of S/Sgt. Stewart pressing his hand against Mr. Malmo-Levine's throat.

Counsel for S/Sgt. Stewart and Sgt. McLaren answered these allegations effectively, consistent with the evidence, and I agree with the following from his closing submission:

> Counsel for The British Columbia Civil Liberties Association has, at paragraphs 122, 123 and 124, contended that an excess of force was used by the striking of Mr. Malmo-Levine's head against the flagpole. In my submission, the best and clearest evidence of that allegation is found in a careful examination of the video tape. I submit that it demonstrates clearly that there was no intentional action taken by S/Sgt. Stewart to cause "a cranial collision with hard objects" and that there was in fact no such collision. Certainly S/Sgt. Stewart pushed Mr. Malmo-Levine but it was in the course of dealing with the circumstances and it is unreasonable to suggest that there should be inferred some intention here to cause such a collision or injury.
>
> . . . .
>
> Mr. Malmo-Levine gave no evidence whatsoever concerning the use of a chokehold. Indeed, Mr. Malmo-Levine can be heard shouting throughout, which would indicate he was not being choked. S/Sgt. Stewart was not cross-examined on that proposition. His testimony made no mention at all of this. I suggest that the evidence in support of this argument is found in the testimony of Ms. Varela. In her testimony in chief, she stated that "an officer had pressed his hand against David's throat".
>
> . . . .
>
> It is submitted that any adjudication of this issue must necessarily focus upon a careful examination of the video tape. Specifically, the video tape excerpt of the incident . . . demonstrates conclusively that Mr. Malmo-Levine was not grabbed by the throat. There was no chokehold utilized or applied in this situation and the submission founded on the proposition that there was should be rejected completely.

The B.C. Civil Liberties Association also recorded its objections to what it described as the unwarranted use of pepper spray by S/Sgt. Stewart against Mr. Malmo-Levine. I have already expressed my views on that.

18.3.5. Police Conduct was Appropriate

As I have expressed my agreement with the response of counsel for S/Sgt. Stewart and Sgt. McLaren to the submission of the B.C. Civil Liberties Association on the two alleged instances of violence, it is only fair that I record the Association's final response to the position taken by counsel for the two officers:

> At tab 2, page 5, paragraph 15, it is assumed that by our criticism of the striking of David Malmo-Levine's head against the flagpole, we were imputing to Hugh Stewart the deliberate intent of causing that collision. We think it unlikely, in fact, that there

> was any such intent. Recognizing the serious consequences that can occur from cranial impacts, however, we stand by our argument that care should be taken to avoid them.
>
> At tab 2, pages 6 through 8, the evidence of Isabela Varela that David Malmo-Levine was grabbed by the throat is provided, but it is asserted that greater reliance should be placed upon the videotape of the incident, and that the videotape does not show David Malmo-Levine being grabbed by the throat. Relevant to that point, however, counsel for Hugh Stewart has pointed out at tab 3, paragraph 2, that ". . . as a general proposition, unless one can be satisfied that there is a continuous and comprehensive video or audio record, it is quite unwise and unhelpful to rely on such records to conclude an event did not occur."

I agree with the following submission of counsel for S/Sgt. Stewart and Sgt. McLaren with respect to the actions of the three officers who initially approached the flagpole:

> In summary, I would submit that the police were properly entitled to make the inquiries as they did. The situation became a nasty confrontation at the point that Mr. Malmo-Levine elected to effect the obstruction that he did and persist as he did. The police action was responsive to Mr. Malmo-Levine; it was measured and appropriate. It was in compliance with the relevant sections of the *Criminal Code* and the accepted principles of force intervention.

That is to say, the police conduct reviewed in this chapter so far was, in my opinion, conduct appropriate to the circumstances.

18.3.6. Overcoming Resistance

Other aspects of this complaint relate to the degree of force used by the officers who assisted in taking Mr. Malmo-Levine into custody.

It was Sgt. (then Cpl.) Claude Wilcott who was first on the scene to assist S/Sgt. Stewart who was unsuccessfully attempting to put a wrist lock on Mr. Malmo-Levine. Sgt. Wilcott tried to grab his other hand as he was flailing and squirming about. Given Mr. Malmo-Levine's resistance, he realized he would not succeed so he put Mr. Malmo-Levine into a headlock. That did not last long. Cst. Michelle Adriaanse and Cst. Patrick Lockert soon arrived to assist and the headlock was released. Cst. Ricki Chaulk also came to help.

The officers moved Mr. Malmo-Levine off to an area east of the flagpole but it was no easy task. He was taken to the ground, but with him struggling every inch of the way, it was difficult to place handcuffs on him. Sgt. Wilcott spoke of trying to remove Mr. Malmo-Levine's right arm from underneath his torso. He explained:

> I was having extreme difficulty in that, he was squirming and twisting and not--not responding to my directions at all. I was then concerned, you know, for what reason he had for hiding his--or maintaining his hand under his torso, at which time I--I briefly patted him down on his right side, feeling for any weapons that he might have, and around his belt area. And then we were eventually able to get the right arm secured behind his back. Even after he was handcuffed he continued to yell and scream and--and squirm and--and resist.

Sgt. Wilcott said that it is normal practice, when doing a pat search of a male subject, to include the groin area because that is a convenient place to hide weapons.

When he was finally on the ground, each officer took one limb, trying to control him. Cst. Adriaanse said Mr. Malmo-Levine was difficult to move because he was basically dead weight. He was an "aggressive, almost violent person," she said. She also acknowledged conducting a pat search for weapons while Mr. Malmo-Levine was on the ground. She said her right hand may have been in the area of Mr. Malmo-Levine's upper thigh or groin.

Cst. Lockert and Cst. Chaulk gave similar evidence of the struggle. Cst. Lockert said that after Mr. Malmo-Levine was handcuffed he continued to kick at the officers and yell and scream to the crowd. Cst. Lockert tied his legs together with a zip strap and he was soon carried away to an awaiting wagon.

Cst. Chaulk said that, with four police officers on him, it was their sheer weight that overcame Mr. Malmo-Levine's resistance. He said that the greater the number of police officers dealing with the arrest of a violent person, the quicker that person can be brought under control, with the least amount of harm to that person and to the police officers. I accept that that is so, and that is how Mr. Malmo-Levine was ultimately restrained.

Mr. Malmo-Levine said he was dragged 10 or 20 feet from the flagpole by the officers and was then forced to the ground. He said he was face down on the sidewalk and was completely immobilized and unable to move or struggle in any way. He said an officer applied his or her knee to his head and neck area and ground his face into the sidewalk and that one officer reached under him and held on to, without squeezing, his testicles. He acknowledged that he never voluntarily stopped struggling; rather, the police forcibly immobilized him.

18.3.7. No Excessive Force

Commission Counsel correctly defined the issue that I must answer with respect to the aspect of the complaint that addresses the arrest of Mr. Malmo-Levine:

> The issue for the Commission to determine is whether the police used excessive force in carrying out the arrest and whether their actions were appropriate to the circumstances.
>
> . . . .
>
> The standard against which to assess whether excessive force was used in the circumstances is set by section 25 of the *Criminal Code* and the RCMP Incident Management/Intervention Model (Ex. 501, 507).

I agree also with the following submission of counsel for the 44 officers:

> Sgt. Wilcott, Cst. Adriaanse, Cst. Chaulk and Cst. Lockert came to the assistance of S./Sgt. Stewart after Mr. Malmo-Levine had been placed under arrest for obstruction. They were entitled to assume that S./Sgt. Stewart had reasonable and probable grounds to make the arrest (*R. v. Debot, supra; R. v. Dawson, supra; R. v. Venzi, supra*). They were authorized by s. 25 of the *Criminal Code* to assist S./Sgt. Stewart in effecting the arrest, and to use the force necessary to do so.

In its final submission, the B.C. Civil Liberties Association expressed the following view:

> Two aspects of the arrest that engendered some comment but to which we specifically do not object were the use of a "come along" wrist lock, on the one hand, and the combined effort of numerous police officers to hold Mr. Malmo-Levine down. Both of these aspects of the arrest were, in our submission, calculated to minimize the amount of force necessary to effect the arrest and to therefore reduce the likelihood of harm that might otherwise have occurred. In particular, we heard no evidence that would indicate any fault on the part of those four officers that were involved in removing Mr. Malmo-Levine from the flagpole site and putting him into custody.

Mr. Malmo-Levine certainly attaches fault to those four officers. My conclusion, however, is that any discomfort experienced by him was due to the battle he put up to avoid detention. In subduing him and bringing him under control, the police officers went no further than was made necessary by his own actions. If an officer took hold of his testicles, it was momentary and in the course of one of the pat searches. Mr. Malmo-Levine acknowledged that although he called out to the crowd "they're squeezing my balls," that never happened. He said he was alerting the crowd to the worst case scenario and attempting to discourage the police from being anywhere near that part of his body. He said he feared what they were going to do next. In my opinion, his own actions were the cause of his predicament - not those of the police officers. He was resistant and uncooperative to the last and I am satisfied the police officers used only the force that was necessary to successfully subdue him. The participation of the four of them minimized the likelihood of physical harm to Mr. Malmo-Levine or to the officers. In the result, no injury occurred to anyone. The conduct of the police officers was appropriate to the circumstances.

19. COMPLAINT CATEGORY 7: DOG BITE

On November 24, some time after Mr. Malmo-Levine was arrested at the flagpole, Jaggi Singh, for the second time that day, and others were arrested at the plaza next to the Rose Garden. The complaint is that during Mr. Singh's arrest, Jamie Doucette was bitten on the arm by an RCMP police service dog.

19.1. Singh Arrest

The details of Mr. Singh's arrest on the afternoon of November 24 are relevant here to the extent that they provide the context for what happened to Jamie Doucette.

Mr. Singh's earlier arrest is discussed in detail in Chapter 17. As a condition of his release on the morning of November 24, he had signed an undertaking to the Provincial Court that he would stay away from the University Endowment Lands, which of course includes UBC campus. He nevertheless returned that afternoon to continue his protest against APEC.

Mr. Singh said he had signed the undertaking fully intending to break it. He announced to the people gathered near the Koerner Library that he had signed the undertaking not to return to campus and then tore it up, saying to those assembled that he intended to "defy" the undertaking. Then he went through the opening in the fence near the flagpole, into the area that would soon be closed off as a secure area.

A substantial number of the police officers who had been in the flagpole area during the Malmo-Levine arrest had remained there. Soon after Mr. Singh passed through the fence opening, with paint can and brush in hand, he and one of his colleagues were arrested. It is not surprising that no complaint was filed regarding the arrest of Mr. Singh and his colleague on the afternoon of November 24. With his deliberate disrespect for and disobedience of a court order and the undertaking which he had signed, this self-styled anarchist could not have expected otherwise from police officers sworn to uphold and respect the law. The police did what was required of them, when it was required of them, and they did it well.

19.2. The Crowd Scene

Ms. Muttray was among those who stayed to watch the developments after Mr. Singh was arrested. She was asked why she had stayed:

> A: Why did I stay there? Because it was just very emotional and very exciting, somehow, and I really wanted to be there and witness it.
>
> Q: Can you describe what the atmosphere was like?
>
> A: People were very determined to stay as long as possible in that zone that was supposed to be closed off. They really wanted to see how the last phase there would be taken away. People were--you know, they were around the flagpole, they were singing a lot. There was--when people got arrested, like--like, you know, Jaggi and the other two people were shouting, shame, shame, at the police, and I could sense that, you know, people were--people were angry about the way it happened.

That testimony paints an accurate picture of what the police were facing at the time, all despite the fact that Ms. Muttray and others were aware that Mr. Singh had returned to campus in breach of a court order and his undertaking. With reference to the Singh arrest, Ms. Muttray went on to say:

> They probably accepted that, that it would happen, but at the same time, you know, we were trying to convey to the police that they shouldn't be here protecting, you know, international persons that are potential war criminals, you know, they should be here protecting Canadian citizens, and--you know that was one of the points people wanted to make.

Sgt. Wilcott said throughout this incident the crowd did a lot of yelling and showed a lot of emotion over the Singh arrest. He was concerned that the crowd was encroaching on the RCMP members who were on the ground trying to get Mr. Singh and his colleague under control. The chanting and the noise made Sgt. Wilcott think the crowd might try to obstruct the arrests and put the RCMP members in some danger. Cst. Patrick Lockert said the crowd was very upset over Mr. Singh being arrested. Cst. Chaulk said someone in the crowd said, referring to the police officers, “don’t let them in.”

19.3. The Dogs are Brought Out

When Mr. Singh and another were handcuffed and on the ground, Sgt. Wilcott ordered the three dog handlers, Csts. Lockert, Chaulk and Milner, to get their police dogs out of the vans and Sgt. Wilcott did the same. He said that because there were now fewer police officers present than there had been earlier, he intended to use the police dogs to set up a perimeter. Cst. Lockert said the object was to protect the officers who were holding the prisoners because "the crowd was getting very agitated again and yelling and screaming and advancing toward the prisoners." He said that a crowd of 50 to 75 protesters were standing within a yard or so from the arresting members. The dogs were harnessed and leashed. Sgt. Wilcott said they set up a line adjacent to the people being arrested and, with another line set up by the VPD Bike Squad, they formed a U-shaped perimeter.

Cst. Lockert said he put a harness on his dog and attached to it a nine-foot leash which he called a "riot line." He said, however, that he held the leash at a distance of about one foot from the dog, with the remainder dangling to the ground. He said the other dogs would have been on short leashes as well. Sgt. Wilcott said his dog was on a six-foot leash but that he shortened it so that there was about one and a half to two feet of leash between where he held it and the dog.

Cst. Lockert explained what happened then:

> A: The crowd is there advancing, yelling, screaming. An individual comes up, very close to my dog and almost gets bitten by my dog. My dog lunges at him and I grab him and I grab him, pull him back. And I tell this individual to get back or he's going to get bitten.
>
> Q: And where had he come from?
>
> A: He--no idea, he just came around from the crowd and worked his way down the outside of the crowd.
>
> . . . .
>
> Q: All right. And did your--your dog actually take a lunge at him?
>
> A: Yes, he did. The individual was very close, my dog took a lunge at him.

Q: And what did you say?

A: Well, I stopped my dog from lunging at him and told him to get back, or he's going to get bitten.

Q: If you had not stopped your dog, is it your opinion, knowing your dog, that he would have bitten him?

A: Yes, he would have bitten.

Q: What did the individual do?

A: He just kept moving down the line towards Corporal Wilcott and there was a TV camera person or a camera person there and he went and sat down right beside him.

Q: Sorry, beside the camera person?

A: Beside the camera person, Yes.

Q: All right. And when you say down the line, is Corporal Wilcott the next Police Officer on the line?

A: He's the next Police Officer, on the line, to my right.

Q: All right. And--

A: And he moved toward Corporal Wilcott.

Q: And the line you're talking about is that line of dog handlers that you've just described?

A: Well, the little shape that we're in, yes.

Q: Yes. Were there any other officers other than the dog handlers?

A: No.

Q: Okay. All right. And so you've indicated this individual sat down near the camera man, what happens then?

A: Corporal Wilcott's dog, give him a little nip on the shoulder.

Q: You've indicated the upper right shoulder?

A: Yes.

Q: All right. Now, when that occurred, was the dog still on a short leash, or a long leash?

A: He was still on a short leash.

Q: And when this individual sat down, how near was he to the dog, as he sat down?

A: Within a foot.

Q: Did you observe Corporal Wilcott to say anything to the individual, when he did that? When he sat down that close?

A: I don't think Corporal Wilcott even saw him.

The person bitten by the dog was Mr. Doucette, then a second year anthropology student at UBC. He returned to Cst. Lockert five or 10 minutes later and asked him if it was Cst. Lockert's dog that had bit him. Cst. Lockert said "No." Mr. Doucette then left. Cst. Lockert acknowledged at the hearing that it would have been a matter of common decency to have told Mr. Doucette that it was Sgt. Wilcott's dog even though that question was never asked of him.

I am satisfied that Sgt. Wilcott was unaware that his dog had bitten Mr. Doucette who, at the time, was either sitting or crouching beside Sgt. Wilcott. He said his dog had made contact with another person who had been standing. Sgt. Wilcott said he was not aware of someone either sitting or crouching in his immediate area and he had no knowledge that his dog had nipped at that person.

Mr. Doucette had witnessed the arrest of Mr. Malmo-Levine, as well as the arrests of Mr. Singh and his associate. He said by this time it was getting late, towards twilight, close to 6:00 p.m. He said it was a very emotional time, with an increased police presence. He said he watched Mr. Singh lying in front of a police vehicle. He explained what he did next:

A: I was standing up for a while. I guess I eventually, you know, things were very confusing, and lots of things were happening, and I thought I would, you know, just sit down and concentrate on one thing. You know, I stress how, you know, disturbing a lot of things that happened that day were, and I think it was important for me, I felt that I just sit down and watch Mr. Singh's arrest. I noticed an officer placing a heel on his back and I was sort of just concentrating on that. My sitting down was no active resistance. It was no great protest. It was just sort of to clear my head and concentrate on one thing.

. . .

Q: All right, so what happened while you were sitting there?

A: As I said earlier, I noticed a police officer placing his heel on Mr. Singh's back, and at that point I was sitting down watching that with my arms crossed like this.

Q: Crossed across your chest, yes.

A: Yes. I remember explicitly there being sort of feet on both sides of me. Around here there being some officers on--all around on both sides.

Q: When you say "feet," you mean people standing beside you?

A: Yeah, people standing, other protestors, I think I might have been the only one sitting. I was also aware that there was a fence behind us, there was, you know, not really much room behind us that people could go. I was very aware of that actually. And then, if we want to get specifically into the actual bite, my position was that I was sitting down, holding my arms crossed, watching this officer with his foot on Mr. Singh's back. To the side of--to my right side, in my vision, I sort of saw a hand reaching outwards with a leash. I guess the physical action would be someone like--sort of almost like a whip, an action like this, and then, you know, noticed sort of a dog's head. It had bit my arm, I sort of went like this, and then the next thing I knew--

THE COMMISSIONER: Just went like what?

THE WITNESS: Sorry, I sort of fell back, I sort of--my reaction was sort of a motion, you know, to push my back back--to, like push myself away from this dog.

Mr. Doucette said the dog bit the upper part of his arm, his body moved backward and he was grabbed by a protester and pulled up. He said he was in a state of shock. He believed his arm was covered by clothing at the time of the bite. He said there was no police line between him and the crowd at this point. He said that no police officer gave him any verbal warning.

Mr. Doucette described the bite wound as a deep scrape, which was not gushing blood but was a deep abrasion. He said it was not an open bloody cut but more of a "seeping" type.

19.4. Mr. Doucette Questions the Dog Handlers

Mr. Doucette said he had two conversations with two different dog handlers. One was his conversation with Cst. Lockert when he asked whether Cst. Lockert's dog had bitten him. The other was a conversation with Cst. Chaulk which Mr. Doucette described as follows:

> I asked if the dogs had their shots and he responded to me that they had their shots, and did I have mine. He was--he said a few things, like, how do we know that you are clean. And I found it very insulting. He was--I guess the connotation was that I might have some, you know, disease or like, you know, like he was afraid that I had AIDS or something like that.

Cst. Chaulk gave his explanation of that conversation:

> Mr. Doucette then went on to ask me, if in fact, my dog, or all the dogs had their shots, and I replied to him that yes, our dogs are--are required to be all updated with their shots. I went on to further advise him that our dogs are all required to have a

> very extensive and complete medical examination, yearly, through policy. And I then recall asking him if, in fact, he was clean. And the reason for that was because I make it a standard practice, myself, that if my dog has any contact with an individual, and by contact I mean actually biting somebody. I make it a point myself personally, to try and find out if this individual has any background with respect to their health, in particular to infectious diseases, if they're a carrier, or something like this. And the reason for that is, if my dog has had contact with somebody, in fact bit them, and the last thing I want is the dog to transfer any body fluids, i.e. blood, from that particular person to me, because the dogs get quite exuberant after the fact, they're quite happy, and it's common for them to jump on you, lick you, just out of happiness. That was my reason for asking that. Had Mr. Doucette told me, in fact, he was a carrier, infectious in any way, I would have made it a priority, on my part, to try to find out whose dog had, in fact, bit him and relayed that information on to him, for his own safety.

19.5. After the Incident

Mr. Doucette said that S/Sgt. Plante was at the site and that he had approached him twice saying he wanted to lodge a formal complaint about what had happened. He said that S/Sgt. Plante told him to come to the UBC Detachment office on Thursday "when this was all over" and they would talk about it. Mr. Doucette said he never went back to talk to S/Sgt. Plante, although he did lodge a complaint with the Detachment about his bicycle.

Like Ms. Muttray, Mr. Doucette stayed at the flagpole until the area was closed off. He said he participated in a sing-along around the flagpole circumference. He said when the site was secured everyone left when required to do so, with the exception of about five people who were carried out by the police and lifted over the gate.

Mr. Doucette said that, later that evening, he went to the emergency ward at the hospital where a nurse cleaned his wound. He said that, before going to the hospital, he likely went to the Student Union Building, to which he returned later in the evening and where, at about 11:00 p.m., he participated in a meeting of an APEC Alert committee.

19.6. The Use of Police Dogs

The three dog handlers all gave evidence about the training, use and control of dogs as part of a certified tactically trained dog team. Cst. Chaulk said they were attached to a riot squad tactical troop. In this instance, the dogs were not brought in to quell a riot. In a riot situation, dogs are used to push a crowd back. Cst. Lockert said that in a riot situation usually the dog is at the end of the full nine-foot leash, causing the crowd to move back beyond the length of the leash. Sgt. Wilcott said that the purpose of having the dogs out on this occasion was not for riot control, that is, for pushing the crowd back, but to form a perimeter with the dogs and their handlers.

The use of police dogs can be frightening though necessary in some circumstances. Ms. Isabela Varela, a graduate student and Green College resident, said the dogs were very aggressive and threatening. She sought an assurance from an officer that a warning would be given before the dogs were released. She explained her concern:

> I felt that it was very deliberately aggressive and intimidating, trying to create a climate of fear. And they succeeded, because they had their dogs straining at the leash and barking. And it was just very scary. And that's why I had approached the Officer, because I wanted to know if they were going to release the hounds, I want to be ready.

The best explanation of what happened to Mr. Doucette came from Cst. Chaulk. When dogs are being used not at full leash for riot control but as they were on November 24, the best way to prevent a dog from biting is to keep the dog as close to the handler as possible. Cst. Chaulk said:

> The dog, and my dog, in particular, that I can speak for. When he's held in close to me, in the situation like that, if a person approaches and gets too close to, you know, a fully trained police dog, in a crowd control situation; if a person gets too close to this dog, he's going to react in one of two ways. Out of protection for me or protection for himself because there is that--that bubble zone, a safe zone that he feels comfortable for. And if a person was to approach him, within a foot or two, given a situation like that, and he's naturally going to either protect myself, as the handler, which he's trained to do, or himself. And that would require lunging at a person, obviously.

Cst. Chaulk was questioned further:

> Q: What other steps would you take to ensure that the--there was no contact between a dog and a member of the crowd?

A: Well, there's--there's really only two ways. One would be to control your police dog and the other would be to--to verbalize with the crowd by telling them to stay back, move away, keep away, verbal--verbal commands.

Q: And did you issue those types of verbal commands to the crowd?

A: Oh, on numerous occasions.

I accept Cst. Chaulk's evidence. His explanation describes and fits with what occurred when Sgt. Wilcott's dog bit or nipped Mr. Doucette's upper arm.

19.7. Police Conduct was Appropriate

I am quite satisfied that Cst. Lockert warned Mr. Doucette to get back as he said he did. Perhaps, with all the noise and yelling, Mr. Doucette did not hear him. I would have thought he would have heard one of Cst. Chaulk's commands to the crowd to stay back, move away and keep away.

In any event, Mr. Doucette should have realized that he was positioning himself on the ground in a very dangerous location. Even if the warnings were drowned out by the high noise level at that time of tension and uncertainty, Mr. Doucette should have realized that he was risking his safety by taking a position on the ground beside the dogs.

The RCMP had a potentially explosive situation to deal with. The unpleasantness of the Malmo-Levine incident was clearly on everyone's mind. The RCMP had just done their duty by placing Mr. Singh under arrest. I find that the handling of the dogs was appropriate to the circumstances.

20. COMPLAINT CATEGORY 8: REMOVAL OF TIBETAN FLAG

The complaint is that RCMP members wrongly removed the Tibetan flag from the Graduate Student Society building, wrongly removed Kevin Dwyer's security accreditation, and inadequately investigated complaints of criminal acts by students of Chinese heritage.

20.1. Complaints Not Pursued

I do not propose to consider the alleged wrongful removal on November 25 of the security accreditation of Kevin Dwyer, the President of the Graduate Student Society, as Mr. Dwyer made no complaint about the incident. Commission Counsel suggested that the complaint filed by Dr. Piper of UBC "may be broad enough to encompass the conduct that led to the removal of [Mr. Dwyer's] security accreditation." I believe that to be questionable and, furthermore, counsel for UBC made no representations on that issue in his closing statement. It will not be pursued further.

With respect to the complaint involving the alleged inadequacy of the investigation of complaints of criminal acts by Chinese students, Commission Counsel said this complaint had been largely retracted by the complainant, Deke Samchok. Upon reviewing Ms. Samchok's evidence, I have concluded that that is so and, therefore, her complaint on this issue will not be pursued further.

20.2. Removal of Tibetan Flag: Background

The only remaining aspect of this complaint is the alleged wrongful removal of the Tibetan flag from the top of the Graduate Student Society building, inside the secure zone across Northwest Marine Drive from the museum.

20.2.1. The Canada Tibet Committee

Ms. Samchok, who was not a UBC student in 1997, was a member of the Canada Tibet Committee. The committee was formed in Montreal in 1987 in response to what she described as "an uprising in Tibet, which was violently cracked down on" and during which "thousands of people were killed or arrested." The Vancouver branch was formed in 1988 and Ms. Samchok has been a member since then. She was born in India to Tibetan parents who she said fled Tibet in 1959 along with several hundred thousand others following the Chinese invasion and occupation of Tibet.

Ms. Samchok says the committee tries to raise awareness about Chinese abuses in Tibet through the organization of public events, lectures and films. Peaceful protests when Chinese leaders visit Canada is also part of the committee's agenda. The Vancouver branch of the committee took part in a human rights forum in the city during APEC week, focusing protests against the visit of Chinese President Jiang Zemin so as to bring attention to China's existing policy on Tibet. The group did not make any statement on APEC itself.

20.2.2. *The Tibetan flag*

Speaking of the Tibetan flag, Ms. Samchok said:

> A: . . . . It's banned in Tibet, people have been shot, you know, on sight for displaying the flag. It's-if I were to display the flag in Tibet, or even if I'm caught in the possession of a flag, I would certainly be arrested, maybe tortured, and possibly, you know, killed. So it's an extremely sensitive symbol to the Chinese, because of its--because it's a symbol of Tibet's history--of historical independence. . . . One of the worst, you know, crimes in Tibet is to display that flag, which is exactly why we felt it's important to be able to display it here in Canada.
>
> Q: Okay, Can you explain that? Why was it important to you that the flag--the flag of Tibet be flown over the Graduate Student Society during the APEC conference?
>
> A: Well, I thought that because of the fact that it's banned inside Tibet and people are routinely, you know, arrested and tortured because of the flag, I felt that as people--or as citizens of a free country here, it's--it behooves us to exercise our freedoms, living in one of the freest countries in the world to show this flag, especially when the Chinese leader is in town; to show them that we're opposed--that people here are opposed to their policies in Tibet, so, that's the significance of it. And the other point being that it's--it was simply a flag. There was no bodies attached to it, so it's strictly a symbolic act. There was no security issue relating to it, and it's about a benign an act of protest as possible, so I couldn't see any justification for removing it.

20.2.3. The Graduate Student Society

The Graduate Student Society has a membership of approximately 6,400 graduate students. In 1997, Mr. Dwyer was working on a Masters degree in Political Studies. In May of that year, the society established a position in opposition to the APEC leaders' meeting planned for campus. Mr. Dwyer said that was done, firstly, because of what the society saw as a unilateral decision by UBC to hold the leaders' meeting on campus and, secondly, the absence of human rights issues from the agenda. In October 1997, the society decided that it would show its opposition by raising the Tibetan flag on the rooftop of its building during the APEC conference. When asked why the Tibetan flag was chosen, Mr. Dwyer said:

> And specifically the Tibetan flag has traditionally been an item where individuals act peacefully around. Protests are all peacefully designed and these are symbolic protests, and so it fit into the scheme of what the GSS wanted to do in regard to the general emotion, which was to oppose publicly, the APEC event.

Mr. Dwyer said the Tibetan flag would draw attention to human rights violations. He believed that it would be visible to the motorcades approaching the museum and he hoped that it would be seen by the leaders as they passed by.

20.2.4. APEC plans for the Graduate Student Society building

Aware of the RCMP's interest in the Graduate Student Society building to house support services at the time of APEC on campus, the society sent a letter dated October 29, 1997 to the RCMP Detachment at UBC advising of its opposition to any use of its building for APEC-related purposes. The letter invited a written explanation of any legal basis the RCMP believed it had to occupy the building if indeed that was its goal.

After he received the letter, Supt. Thompsett spoke with Mr. Dwyer by telephone. Then he wrote to him on November 14. Besides setting out the legal basis as requested, Supt. Thompsett asked for the society's cooperation in closing the building from 5:00 p.m. on November 24 to 6:00 p.m. on November 25, with accreditation privileges to be given to society staff and to five of its members. Mr. Dwyer was one of them. It was made clear that the building would not be used to facilitate any RCMP operations. The RCMP agreed to pay a stipulated sum to the society to compensate it for the anticipated loss of revenue during the closure.

On the same day that Supt. Thompsett sent his letter of reply, he and Mr. Dwyer had a further telephone conversation. As before, Mr. Dwyer made it quite clear that the Graduate Student Society planned to hang banners on its building, expressing opposition to APEC.

The society had made it known that the Tibetan flag would be raised on the flagpole atop its building at 11:00 a.m. on November 21. It specifically invited Ms. Samchok to attend and she did so.

During the afternoon of November 24, Supt. Thompsett came to the building and had a chat with Mr. Dwyer. Supt. Thompsett explained what occurred:

> And I had not heard back from Mr. Dwyer from my letter, so on November 24th, I thought it was around noon time, or it could be shortly after noon, I went to his office and he was there with a--some of his staff, or people who I believed to be his staff. I asked him if we had a deal? He said we may have a deal. He said we've got some banners on the building, and when I walked in the building I recalled seeing a banner, at least one or two banners. And he said we have a flag on the roof, and he said we want those to stay up. I said, Mr. Dwyer, I have--I'm not concerned with your banners or flag. They can stay up as far as I'm concerned, so have we got a deal? He said, we've got a deal.

Having received Supt. Thompsett's assurance about the banners and flag, Mr. Dwyer acknowledged that they did indeed have a deal.

20.2.5. The Flag Controversy

Within an hour of Supt. Thompsett's departure, Mr. Dwyer received a telephone call from a Mr. Cong Jin Lu who he described as the President of the Chinese Students and Scholars Association. The two had previously met. Mr. Dwyer said that Mr. Lu was extremely agitated and upset that the Tibetan flag had been raised. Mr. Dwyer said that

Mr. Lu demanded its removal. Mr. Dwyer was quick to advise that the Tibetan flag would not be removed. He said that Mr. Lu talked of possible retaliation in mainland China against relatives of Chinese nationals studying at UBC, and who were members of the Graduate Student Society, as such students would be viewed as having approved the flying of the flag. Despite this "emotional blackmail", as Mr. Dwyer described it, he held his ground and advised that the Tibetan flag would remain atop the building. According to Mr. Dwyer, Mr. Lu said that, in light of Mr. Dwyer's refusal to remove the flag, he would use whatever means were available to him to have the flag removed, including going over and ripping the flag down and going through anything that obstructed him on his way.

At about 11:00 p.m. on November 24, S/Sgt. Plante, who was still at work in the UBC Detachment office, received a telephone call from APEC Command Centre telling him that there was a person outside the detachment office who wanted to communicate information about an incident or protest planned for the next day in respect of the flying of the Tibetan flag atop the Graduate Student Society building. At this point, the detachment office was closed for the day. S/Sgt. Plante contacted Cst. Steven James of the detachment police staff and told him to attend to the person standing outside. S/Sgt. Plante never saw the person, nor does he know the person's name, although he was aware that it was someone with what he described as a "Chinese name."

After talking to the individual, Cst. James, who was not a witness at the hearing, told S/Sgt. Plante that the protest might involve 500 people intent on entering the secure zone and removing the Tibetan flag from the building. The informant had indicated that the likelihood of violence was very strong. At the hearing, S/Sgt. Plante described his response to Cst. James' oral report and the action he decided to take to avoid the possibility of violence erupting from an entry into the secure zone:

> A: So based on that information and I made a decision, that I felt that to eliminate that possibility, that it would be appropriate to remove the flag from the top of the

> Graduate Student Society. I then contacted our Site Command, I believe it was Cpl. Rick Anderson, was at the Site Command at that particular location. I advised him of the information that I had received, I also advised him of the decision that I felt would be appropriate in this particular case, i.e. removal of the flag. And I asked that he would ensure that it was removed by 5:00 o'clock of the morning of the 25th.
>
> Q: Okay, now did you have any intelligence on how much danger the persons that didn't want the flag to be flying, posed?
>
> A: No, I did not. Not any specific information.

At some point after that decision was made, another constable on the UBC Detachment staff, Cst. Ryan Schlecker, told S/Sgt. Plante that he had received the same information that had been communicated to Cst. James. S/Sgt. Plante believed that Cst. Schlecker's informant was a different person than the one who had talked with Cst. James.

S/Sgt. Plante contacted Supt. Thompsett's assistant, Cpl. (now Sgt.) Anderson, between 11:00 p.m. and midnight. When he made his call, S/Sgt. Plante was unaware that the flag had been the subject of discussion between Mr. Dwyer and Supt. Thompsett and that they had struck a deal allowing the flag to fly atop the Graduate Student Society building until after the leaders left campus.

Cpl. Anderson said that, in their telephone conversation, S/Sgt. Plante told him that a demonstration could possibly occur the next day involving up to 500 Chinese students protesting the flying of the Tibetan flag. Cpl. Anderson acknowledged that S/Sgt. Plante had expressed a preference for the flag to be down by 5:00 a.m. the following morning. I accept Cpl. Anderson's evidence that he decided, in his own mind, that he would not deal with the situation until the next morning and that, before he did so, he would talk again with S/Sgt. Plante to see if there were any new developments.

S/Sgt. Plante thought he had received a guarantee from Cpl. Anderson that the flag would come down. I believe he was genuine, albeit mistaken, in that belief. S/Sgt. Plante relayed the information to Cst. James and it is S/Sgt. Plante's belief that Cst. James then passed on the information that the flag would be down by 5:00 a.m. the following morning to the initial informant.

S/Sgt. Plante took responsibility for the decision to have the flag removed. The fact was, however, that it was not his decision to make. The flag was flying inside the secure zone and he knew that his jurisdiction as Detachment Commander on November 24-25 did not extend into that zone. In his drive to accomplish what he thought should be done, I believe he overlooked that fact.

20.2.6. *The Chinese Consulate*

At about 8:15-8:20 a.m. on November 25, S/Sgt. Plante received a telephone call from the Chinese Consulate in Vancouver complaining that the flag was still flying. The caller had understood that the flag was to have been removed by 5:00 a.m. Obviously there had been some direct or indirect communication between the initial informant and the Chinese Consulate about the removal of the flag, and the Chinese government representative decided to complain to the RCMP directly.

I find it alarming that the Chinese Consulate was in contact with the informant and took steps to influence the RCMP to remove the flag. In my view, that intervention raises the possibility that the informant provided his "information" to the RCMP Detachment at the request of the Chinese Consulate. There is, however, no direct evidence on this issue and, as a result, I cannot find as a fact that the Chinese Consulate instigated the informant's actions. However, I do wish to make it very clear that the RCMP must not tolerate interference by foreign diplomats or officials into security matters, particularly where the constitutional rights of Canadian citizens are at stake.

In any event, after receiving the telephone call from the Chinese Consulate, S/Sgt. Plante immediately called the Site Command office and again asked that the flag be removed. He said he was assured that it would be removed. In that call, S/Sgt. Plante did not speak with Cpl. Anderson as he had done the night before. The message was communicated to the dispatch operator. This was an extremely busy time at the Site Command Centre which was situated very close to the museum. Prime Minister Chrétien had arrived by the time S/Sgt. Plante made his call and the arrival of the other motorcades was imminent. S/Sgt. Plante had directed the removal of the flag the night before, and the telephone call from the Chinese Consulate simply served as notice that his direction had not yet been carried out, and prompted him to follow up.

20.2.7. Removal of the Flag

The dispatcher reported S/Sgt. Plante's call to Cpl. Anderson shortly after it was received and Cpl. Anderson soon decided that the flag would come down. With so much happening at that time, he did not consult further with S/Sgt. Plante or with Supt. Thompsett. I accept Cpl. Anderson's evidence that, although he was aware of Supt. Thompsett's discussion with Mr. Dwyer about banners flying on the building, he was unaware that the two had made a deal about the flag.

At about that time, Supt. Thompsett heard some discussion over a radio communication system about the flag and protesters wanting it removed from the building. He did not become involved other than to advise where keys to the building could be obtained. He had confidence in those who were assisting him and he devoted his time to the arrival of the motorcades. At that point, he held responsibility for the safety of the world leaders who were arriving at the museum and I do not fault him for leaving it to others to deal with the flag issue, the particulars of which were not known to him.

On the instructions of Cpl. Anderson, the officers assigned to perimeter security in the vicinity of the Graduate Student Society building did as directed and removed the flag. At 9:22 a.m. it was reported that the flag was gone. No fault or responsibility rests with those involved in the actual removal of the flag. They knew nothing of the background of the matter and were simply following orders from those who had the responsibility to make the decision.

20.2.8. Reasons for the Removal

Cpl. Anderson was asked what problem he was trying to address in ordering the removal of the flag. He said it was to quell the demonstration by the 500 Chinese students and to avoid a clash between them and the 200 or more APEC Alert participants that Cpl. Anderson anticipated would be out demonstrating. Cpl. Anderson said that he was motivated to act because of the confidence he had in S/Sgt. Plante. Specifically, Cpl. Anderson was asked whether he had turned his mind to the possibility that the suggestion that 500 angry Chinese students might mobilize was simply a smoke screen. He said that, had the information come from someone other than S/Sgt. Plante, "alarms would ring." But as S/Sgt. Plante was "the Detachment Commander out there, knowing the situation and being quite concerned about it and valuing his opinion," Cpl. Anderson said he acted on what he saw as being S/Sgt. Plante's recommendation, not his decision.

I believe that S/Sgt. Plante came on very strong with respect to what he wanted to see happen. He incorrectly believed that he had decision-making authority on the issue. He did not consider that he was making a recommendation but rather a decision that he expected to be carried out. I have no doubt that that message, coming from someone considerably superior in rank, played a significant role in Cpl. Anderson's decision to order the removal of the flag.

Cpl. Anderson acknowledged that between 8:15 and 9:30 a.m. he had received no indication that angry Chinese students were actually mobilizing anywhere on the campus to go after the flag. He also acknowledged that all officers providing security services on site had communication devices through which they could have communicated any such development if any sight or sound of it appeared, which it did not. Supt. Thompsett acknowledged that, as Site Commander, he received no information on November 25 that angry Chinese students opposed to the presence of the Tibetan flag were creating any sort of problems for RCMP officers under his command. He would have expected to receive that information if it had been happening.

S/Sgt. Plante was queried extensively about his decision that the flag should be taken down, made immediately after receiving Cst. James' oral report and without any information to back it up. A picture of his motivation emerges from the following extracts from his evidence:

- In response to a question about whether he had made a judgment call to remove the flag to avoid the possibility of other unlawful activities:

> Yes, that's correct . . . I was already aware at that point, that there was likely to be a fairly strong protest in reference to the meeting organized for the 25th at the MOA. I felt that this was sort of a side line issue that could be, perhaps eliminated by a mere removal of the flag for a short period of time. And it was a decision--a judgment call that I made, yes.

- In answer to a question about why he did not recommend that more police officers be placed near the Graduate Student Society building:

> Well my sole purpose was to eliminate or reduce the likelihood of--of confrontation. I felt with the increased presence, from the information I had, that increased presence of police would have just contributed perhaps, to the confrontation.

- In answer to a question about what he considered to be the RCMP's legal authority for removing the flag:

> I was aware that the responsibility for the property had been to the Federal Government. As such, I felt that--that there was--the authority was in place to remove the flag.

- After acknowledging that he knew that some people view the Chinese occupation of Tibet to be improper or unlawful and that some of them assert it by flying the Tibetan flag, he was asked why he did not turn his mind to those matters on that day or realize that they were of importance:

> Frankly I didn't really include that portion of the side of the story in my decision. Frankly, my decision was predicated entirely on the issue of one issue alone.

Q: Hmm hmm.

> A: Is that I wanted to avoid another confrontation. And I felt it was a decision that I, at that point, that I made. And like I say, my whole intent was to avoid confrontation.
>
> Q: All right. I think I understand. So that--that aspect of it, really just completely took precedence for you and other--other concerns just didn't enter into it?
>
> A: That's correct.

- After acknowledging that his concern was the prospect of a number of Chinese students planning to take the flag down, he was asked if he considered the importance of the right to freedom of expression:

> A: As I've indicated, I didn't--I didn't consider the other side of that, what you've just stated. My only issue was to attempt to reduce the likelihood of confrontation.
>
> Q: And you accept that the RCMP are subject to the *Charter* rights, sir?
>
> A: Yes.
>
> Q: And you know that the RCMP can only infringe *Charter* rights if first of all, there's a law that allows you to do so? Do you know that, sir?
>
> A: A law that allows us to breach the *Charter*, yes.
>
> Q: Yea. And you also know, sir, that-that--that one shouldn't infringe *Charter* rights unless it's necessary to do so?
>
> A: Yes.

At about 11:00 a.m., Ms. Samchok telephoned the Graduate Student Society office and learned that the flag had been removed earlier in the morning by two RCMP officers. She then telephoned S/Sgt. Plante who told her he had given the order for the flag to come down because threats had been made that a violent protest by Chinese students would result if the flag remained in place.

S/Sgt. Plante then telephoned Supt. Thompsett and learned that he had told Mr. Dwyer that he saw no reason why the flag could not remain atop the building. Supt. Thompsett confirmed that he told S/Sgt. Plante that he had no problem with the flag being up.

20.2.9. Re-Raising the Flag

Ms. Samchok then called Mr. Dwyer at his home and told him the flag had been removed. They agreed to meet and go to UBC with another Tibetan flag and try to have it raised on the same flagpole. They did not succeed because RCMP officers would not let Mr. Dwyer near the building unless he surrendered either the flag or his accreditation pass. He opted to keep the flag and surrendered his pass. He emphasized to the officers at the time, as he did at the hearing, that he was the President of the Graduate Student Society and that he and Ms. Samchok were not there to engage in acts of civil disobedience.

While at the site, Mr. Dwyer spoke by telephone to S/Sgt. Plante who said he had not been aware of the agreement with Supt. Thompsett about the flag. S/Sgt. Plante told Mr. Dwyer that, after learning of the plans of the angry Chinese students, he decided to have the flag removed and he took responsibility for that decision.

On November 26, the Tibetan flag was again raised on the Graduate Student Society building and it remained there until the society decided to remove it on November 30. Mr. Dwyer explained that the purpose of again raising the flag was to re-establish the right to free expression. This prompted what Mr. Dwyer described as "quite a stir amongst the Chinese nationals at UBC." It brought several complaints by both e-mail and telephone. S/Sgt. Plante received some of those complaints at the UBC Detachment office. Interestingly, his response was that the RCMP would not become involved in removing the flag because it was not illegal for the society to fly the flag atop its building.

20.3. Issues

The issues for my consideration are whether the removal of the Tibetan flag from the Graduate Student Society building was consistent with respect for the *Charter* and appropriate to the circumstances.

20.3.1. Was the Flag Removal Justified?

I will first address the *Charter* issue. In my view, it is not necessary to engage in a detailed analysis of whether the removal of the Tibetan flag by the RCMP infringed the *Charter*. Undoubtedly, the flying of the flag was constitutionally protected political expression and its removal was inconsistent with section 2(b) of the *Charter*, which guarantees "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." Counsel for the 44 RCMP members conceded this to be so.

The issue then becomes whether the removal of the flag was justifiable under section 1 of the *Charter*. Section 1 qualifies the rights set out in the *Charter* by providing that they are guaranteed "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." That is, government conduct which infringes *Charter* rights may still be lawful if it can be justified under section 1 (see Chapter 7).

20.3.1.1. Was the flag removal prescribed by law?

To determine whether conduct that infringes a *Charter* right is nevertheless justified under section 1, the first question that must be answered is whether it was "prescribed by law." In other words, was the conduct authorized by a statute or regulation, or by the application of a common law rule? (*R. v. Therens*, [1985] 1 S.C.R. 613.) According to Professor Peter Hogg, the words "prescribed by law" make it clear that "an act that is not legally authorized can never be justified under section 1, no matter how reasonable or demonstrably justified it may appear to be."

20.3.1.2. Statutory authority

Counsel for the 44 RCMP members relied on section 30 of the *Criminal Code* as providing the necessary authority for the removal of the flag:

> 30. Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal thereof and may detain any person who commits or is about to join in or to renew the breach of the peace, for the purpose of giving him into the custody of a peace officer, if he uses no more force than is reasonably necessary to prevent the continuance or renewal of the breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of the breach of the peace.

Counsel cited *R. v. White* [1994] O.J. No. 1766 (Gen. Div.) for the proposition that section 30 authorizes police to interfere with the rights of someone other than the person actually breaching the peace, if the interference is for the purpose of preventing the breach of the peace. The implication is that the RCMP were entitled to infringe the rights of those who raised the Tibetan flag, even though they had not breached the peace.

In my view, neither section 30 nor the decision in *White* provide the RCMP with the necessary authority, as they only apply to situations where a police officer actually witnesses a breach of the peace or where a breach of the peace is imminent. No breach of the peace had occurred, nor was one imminent.

20.3.1.3. Common law authority

In addition to the statutory power, under the *Criminal Code*, to prevent the continuation or repetition of a breach of the peace, counsel submitted that the RCMP were authorized by the common law to remove the Tibetan flag to prevent an "apprehended" breach of the peace. Counsel relied on *Hayes v. Thompson* (1985), 18 C.C.C. (3d) 254 (B.C.C.A.) and *Knowlton v. The Queen* (1973), 10 C.C.C. (2d) 377 to support this proposition.

20.3.1.4. Police duties and powers

The issue in *Knowlton*, a pre-*Charter* case, was police duty and the use of powers associated with such duty. *Knowlton* arose out of the official visit of Premier Kosygin of the U.S.S.R. to Canada in 1971. Just before the arrival of Premier Kosygin at his Edmonton hotel, a Mr. Knowlton told police he wanted to enter an area that had been cordoned off and take pictures. The officer told him he could not, but Mr. Knowlton nevertheless entered the restricted area and was arrested for obstructing a police officer.

He was acquitted at trial but convicted on appeal. On further appeal to the Supreme Court of Canada, Fauteux C.J. considered the powers of the police to prevent apprehended breaches of the peace. In doing so, he applied what has come to be known as the "ancillary powers doctrine" developed by the English Court of Appeal in *R. v. Waterfield* [1964] 1 Q.B. 164 (C.A.). It is a two-step test for ascertaining the scope of police powers to interfere with individual rights:

1. Was the conduct within the general scope of a duty imposed on police, either by statute or common law? and
2. If so, did it involve an unjustified use of powers associated with that duty?

After noting that police officers have a statutory duty to preserve the peace, Fauteux C.J. held that the police conduct fell within the general scope of their duties and, therefore, met the first branch of the test:

> It is notorious and of common knowledge that the official visit of the head of state or high rank dignitary of a foreign country, friendly as either may be, is an event that frequently engenders a real or apprehended threat to the preservation of peace and that calls, therefore, for the adoption of proper and reasonable security measures in and by the host country. Demonstration of this assertion can hardly be here more to the point than by merely referring to the criminal assault actually committed on the person of Premier Kosygin, in the City of Ottawa, a few days only before his visit to the City of Edmonton.
>
> According to the principles which, for the preservation of peace and prevention of crime, underlie the provisions of section 30, amongst others, of the Criminal Code, these official authorities were not only entitled but in duty bound, as peace officers, to prevent a renewal of a like criminal assault on the person of Premier Kosygin during his official visit in Canada. In this respect, they had a specific and binding obligation to take proper and reasonable steps. The restriction of the right of free access of the public to public streets, at the strategic point mentioned above, was one of the steps--not an unusual one--which police authorities considered and adopted as necessary for the attainment of the purpose aforesaid. In my opinion, such conduct was clearly falling within the general scope of the duties imposed upon them.

Fauteux C.J. went on to find that the police had not resorted to any unjustifiable use of the powers associated with the duty imposed on them. I note that he did not rely upon section 30 but, rather, the common law principles underlying section 30, which impose a duty upon police officers to take proper and reasonable steps to prevent breaches of the peace.

The *Waterfield* test was approved by the Supreme Court of Canada, post-*Charter*, in *R. v. Dedman*, [1985] 2 S.C.R. 2 and, more recently, in *R. v. Godoy*, [1999] 1 S.C.R. 311.

In *Dedman*, the court made it clear that, at common law, the principal duties of police officers are the preservation of the peace, the prevention of crime, and the protection of life and property, and that police powers derive from the nature and scope of those duties. However, it is also clear that police conduct is not rendered lawful merely because it assists in the performance of the duties assigned to them: *R. v. Simpson* (1993), 12 O.R. (3d) 182 (C.A.).

The second branch of the test for determining whether police conduct that infringes on individual rights is justifiable is one of "reasonable necessity." That is, it must be necessary for carrying out the particular police duty, and it must be reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference.

The Quebec Superior Court, considering police conduct at the Summit of the Americas in Quebec City in April, 2001 appears to have accepted that an interference with individual liberties that is both necessary and reasonable will be "prescribed by law" for the purposes of section 1 of the *Charter*: *Tremblay v. Québec (Procureur Général)* [2001] J.Q. No. 1504 (Que. S.C.), application for leave to appeal dismissed [2001] S.C.C.A. No. 231.

20.3.1.5. Common law power to arrest to prevent a breach of the peace

In *Knowlton*, the court established the test for determining the extent of police powers to fulfill police duties. In *Hayes*, the court considered whether the police have a common law power to arrest where there are reasonable grounds to believe a person is about to breach the peace. The court confirmed that, at common law, a peace officer who reasonably and honestly believes that a breach of the peace will be committed in the immediate future has the power to arrest without warrant even though no breach has been committed. Even if the officer is mistaken in the belief that a breach of the peace is imminent, the arrest will be lawful if that belief is honestly held, and based on reasonable grounds.

The court in *Hayes* referred to section 18(1) of the *RCMP Act*, which imposes a duty on police officers to keep the peace and said that these provisions clarify that the RCMP are obligated to preserve the peace, and have the accompanying common law power to arrest for an apprehended breach of the peace, provided the belief is honestly and reasonably held.

20.3.1.6. Is there a power to arrest to prevent a breach of the peace that is not imminent?

In my view, this leaves unresolved the issue of whether the police may act to prevent a breach of the peace which is not "imminent" by taking proactive steps, as the RCMP did in respect of the Tibetan flag.

In *Brown v. Regional Municipality of Durham Police Service Board* (1998), 43 O.R. (3d) 223 (C.A.), Doherty J.A. considered the common law powers of police officers, including the ability of the police to take "proactive" steps to prevent breaches of the peace. In that case, police had used roadside checkpoints to detain members of a motorcycle club who were gathering at a beach resort. The club members challenged the detentions under section 9 of the *Charter* which guarantees the right not to be arbitrarily detained or imprisoned. The action was dismissed and the members appealed.

Doherty J.A. nevertheless considered whether the detentions were authorized at common law. The police relied on the "ancillary powers doctrine" to argue that when acting in the execution of their duty to maintain the peace, they may interfere with individual rights and liberties if the interference is justifiable. The court confirmed that the ancillary powers doctrine is "the established means by which the courts must draw the line between police conduct which is lawful and that which amounts to an unconstitutional interference with individual liberties."

Doherty J.A. went on to note that, in some cases, "proactive" policing will be justifiable:

> Proactive policing is in many ways more efficient and effective than reactive policing. Where proactive steps do not collide with individual rights, that increased efficiency and effectiveness comes at no constitutional cost. Even where there is interference with individual rights, the societal gains are sometimes worth the interference.

However, Doherty J.A. made it clear that an arrest of a person who the officer determines is about to breach the peace will be constitutionally unjustifiable unless the apprehended breach is "imminent" and there is a "real" or "substantial" risk that it will occur:

In the circumstances, Doherty J.A. found that the apprehended harm was not imminent and that the detentions were not necessary to maintain the public peace. He drew a distinction between the police *duty* to keep the peace and the police *power* to take steps to fulfil that duty, as equating the two "ignores the importance attached to individual liberties in our society".

I cannot do better than to quote Doherty J.A.'s statement of the law in this area:

> The balance struck between common law police powers and individual liberties puts a premium on individual freedom and makes crime prevention and peacekeeping more difficult for the police. In some situations, the requirement that there must be a real risk of imminent harm before the police can interfere with individual rights will leave the police powerless to prevent crime. The efficacy of laws controlling the relationship between the police and the individual is not, however, measured only from the perspective of crime control and public safety. We want to be safe, but we need to be free.

In this case, I do not believe that the removal of the flag by the RCMP was prescribed by the common law. I do not believe that either Cpl. Anderson or S/Sgt. Plante had reasonable grounds to believe that a "real" or "substantial" breach of the peace was imminent.

The flying of the flag was a lawful, constitutionally protected act of political expression yet, with no knowledge of the credibility or motivations of the informants S/Sgt. Plante took it upon himself to direct its removal. His only reason was his unsubstantiated concern about a potential confrontation between Chinese students and 200 APEC Alert members, based on no evidence whatsoever, except that of one or possibly two unidentified informants, that 500 Chinese students intended to storm the Graduate Student Society building.

There is no doubt that the RCMP were required to safeguard the visiting leaders and generally ensure site security. There is also no doubt that this was an extremely important and difficult task. However, I do not believe that the RCMP were entitled to simply eliminate every conceivable source of conflict, regardless of the constitutional rights of Canadians. If the RCMP were so entitled, the *Charter* would be rendered of no effect.

In this case, to prevent a very likely non-existent group of Chinese students from committing a potentially unlawful act, S/Sgt. Plante completely negated the *Charter* right to free expression of the students who wished to fly the Tibetan flag. He directed no investigation into the matter, made no inquiries and gave no consideration whatsoever to the reason the flag was flying and the sensitivities surrounding the issue. He dismissed the other options afforded by the substantial police presence on campus at the time.

I agree substantially with the following submission by counsel for the B.C. Civil Liberties Association:

> If the actual reason for the RCMP's removal of the Tibetan flag were the same as its claimed justification for doing so - i.e., as a response to threats by Chinese students to violently protest and remove the Tibetan flag themselves - then it would represent the most perverse approach to policing imaginable. That is, faced with the threat of a violent and unlawful act, the RCMP supposedly decided neither to restrain those who had made the threats nor to arrest them when they attempted to commit the threatened offence, but to instead take action against those law-abiding citizens who were the object of the threats.

In my view, the RCMP were not entitled to interfere with *Charter* rights without first determining whether the group of angry Chinese students in fact existed and if so, taking steps to deter their actions. S/Sgt. Plante committed the error referred to in *Brown*: he equated the police duty to keep the peace with the police power to take steps to keep the peace. Because there was no real risk of imminent harm, the removal of the flag was not prescribed by statute or by common law and the RCMP were not entitled to remove the flag. Therefore, I am satisfied that the removal of the Tibetan flag from the Graduate Student Society Building was inconsistent with a respect for *Charter* rights.

20.3.2. Was the Flag Removal Inappropriate?

Similarly, I have no doubt that the RCMP conduct was not appropriate to the circumstances. The raising of the Tibetan flag was perfectly lawful and, for the reasons given above, it should not have been removed. This is particularly so given the fact that Supt. Thompsett had struck a deal with Mr. Dwyer and confirmed that the flag could fly.

I assign no responsibility to those who carried out the actual removal of the flag. They were simply following the orders of Cpl. Anderson who, in turn, was motivated to give the order by S/Sgt. Plante's "recommendation" that the flag be removed.

As to Cpl. Anderson, who had taken charge of the matter from Supt. Thompsett, he gave the order to remove the flag and, in doing so, acted inappropriately. Although I am satisfied that Cpl. Anderson was influenced by the fact that the recommendation to remove the flag came from S/Sgt. Plante, a higher ranking officer whose opinion he valued, Cpl. Anderson knew that the decision was his alone to make and that Supt. Thompsett, not S/Sgt. Plante, had authority over the secure zone. Cpl. Anderson ordered the removal of the flag even though he had received no indication that Chinese students were gathering and preparing to storm the Graduate Student Society building and remove the flag. There was clearly no real or substantial risk of imminent harm to justify the negation of the right to freedom of expression being exercised by the flying of the flag.

S/Sgt. Plante placed Cpl. Anderson in a very difficult situation. In reality the Staff Sergeant was ordering the Corporal to follow an order he had no authority to give. It was expecting a lot of the Corporal to decline to follow the direction given him and I can understand the pressure this put on him. He should, nevertheless, have withstood the pressure and declined. I have no doubt that his superior, Supt. Thompsett, a most reasonable man well-fortified with common sense, would have supported him. Under the circumstances, I do not believe that Cpl. Anderson's actions warrant censure. He is a good officer who was placed in a most difficult position by both the actions of an officer superior in rank and the pressures of the moment with the arrival of the 18 leaders.

As to S/Sgt. Plante, he was motivated to ensure the safety of the visiting leaders by eliminating any possible sources of confrontation. He did so without due regard for the limits on police authority to interfere with individual rights, and without investigating the reliability of information provided by informants. He believed, incorrectly, that he had the authority to order the removal of the flag and he expected Cpl. Anderson to carry out his order. He did not have that authority and I am satisfied that he acted inappropriately in his handling of the matter, both late in the evening of November 24 and in the morning hours of November 25.

21. COMPLAINT CATEGORY 9: REMOVAL OF GREEN COLLEGE SIGNS & JONES ARREST

Signs made by Craig Jones were removed by RCMP members from the fence in front of Green College. More signs were removed from Mr. Jones and other residents of Green College when they gathered on the lawn in front of their residence, outside the secure zone just before the motorcades arrived. Mr. Jones was pushed to the ground and arrested.

21.1. Removal of Signs from the Security Fence

In Chapter 12, I reviewed the placement of Mr. Jones' three signs on the security fence outside Green College and their removal. In all, his signs comprised 30 sheets of paper, each 8½ by 11 inches. Supt. Thompsett said the signs were a definite security concern because they obstructed the ability of the police to see through the security fence. He also said that if they were allowed to remain they would have been an invitation to others to put up similar signs, which would have further affected visibility. In my opinion, Supt. Thompsett's reasons for ordering the removal of Mr. Jones' signs from the security fence were sound. He made a proper and appropriate decision in directing their removal.

21.2. Insp. Dingwall Confronts the Green College Protesters

Sometime after 7:30 a.m. on November 25, Supt. May and Insp. Dingwall set out on a tour of the secure zone on campus. At about 7:50 a.m., their attention was drawn to a small group of people gathering on the lawn outside Green College. Some were displaying anti-APEC signs. Mr. Jones had affixed his two signs ("DEMOCRACY" and "FREE SPEECH"), which had been returned to him the previous evening, to a pair of wheeled, free-standing chrome coat racks. The coat racks were on the sidewalk next to the curb outside the secure zone but very close to where the motorcades were to pass, beginning at about 8:30 that morning.

Insp. Dingwall left Supt. May and went directly to the Green College site. He erroneously believed the people had no right to be there and he was surprised that a demonstration seemed to be forming. He said he walked over to those assembled, identified himself as the Deputy Operations Commander for APEC, and told them that they could not stay where they were but would be welcome to move to the designated demonstration area across the road at the law school.

21.2.1. A Mistaken Belief

Insp. Dingwall was alone in believing that Green College and the surrounding grounds were within the secure zone. He was wrong in that belief. Both Supts. May and Thompsett acknowledged that the buildings and grounds of Green College were outside the secure zone. Cpl. Anderson knew that to be so. In fact, he had considered and rejected the possibility of protesters engaging in unlawful activity at that location. Under questioning at the hearing he explained:

> Q: It was your expectation that they would not engage in any unlawful activities, because it could jeopardize their standing at the University?
>
> A: That's correct.
>
> Q: All right. So your assessment was insofar as the residents of Green College were concerned, that they were people--they were first of all, graduate students. They were responsible and they were people who were not disposed to unlawful activity; correct?
>
> A: Correct.
>
> Q: All right. And when you said that--that you expected they would have a vested interest in behaving themselves. I just want to--when you--when you used that phrase, "behaving themselves," you did not mean that they would not engage in, for example, the perfectly lawful activity of standing on the lawn with signs or banners; correct?
>
> A: No, I meant more of a--a violent nature, such as throwing rocks or projectiles towards a-a slowing motor--motorcade--.

Cpl. Anderson said he believed that if demonstrators did appear in the Green College area, police would be on hand to deal with the situation by, for example, moving the demonstrators back from the fence or further down the road.

Counsel for UBC established with Supt. May that people were free to demonstrate outside the secure zone and that Green College was outside that zone and then questioned him further:

> Q: The residents at Green College had a right to protest with-and you will say-with the proviso that they didn't create a security concern?
>
> A: Correct.
>
> Q: And, you were caught by surprise that there was protests, simply by the fact that you or your other planners hadn't anticipated that the students at Green College would actually protest?
>
> A: That's correct, we hadn't anticipated a protest in that area.

Complainants' counsel similarly questioned Supt May:

> Q: And you had no reason to believe that there was anybody at Green College who posed a security threat to the motorcade, right?
>
> A: I had no reason to believe that, no.

Ms. Courtney attended a public information meeting on campus on March 27, 1997. When a question was asked as to where people would be able to protest and be seen by the APEC leaders, her response was that protests could occur anywhere outside the secure zone. Ms. Courtney said that the permitted protest area "absolutely" included the Green College location. Indeed, her understanding was that Green College was a permitted protest site:

> Q: And as far as you were aware, based on all of the discussions you had pertaining to APEC security, and the issue of demonstrations, that students were going to be entitled to, for example, stand on the premises of Green College with banners or signs?
>
> A: Yes, that was my understanding.
>
> Q: In all of your dealings with Members of the RCMP had they ever suggested to you that any students of Green College would not be permitted to stand on the grounds with signs or banners?
>
> A: No.

Mr. Vanderloo said it was common knowledge at ACCO that Green College was outside the secure zone. He correctly believed that Supt. May was aware that Green College was outside the secure zone and he assumed that Insp. Dingwall would have been similarly aware. Mr. Vanderloo was apparently incorrect in that assumption.

Insp. Dingwall said he was never told of the November 22 amendment to the Licence Agreement, which revised the site plan attached as Schedule A to the Licence Agreement and clearly showed Green College outside the secure zone. He understood that the site plan attached to the Licence Agreement at the time of its execution placed Green College within the secure zone. Everyone else had known for a considerable time prior to November 22 that Green College was outside the secure zone and how Insp. Dingwall was in the dark on that issue is indeed a mystery.

21.3. Insp. Dingwall Orders the Signs Removed

Richard Emrich, a Masters student at UBC in Mechanical Engineering and a Green College resident, was one of those approached by Insp. Dingwall. Mr. Emrich had just witnessed Mr. Jones roll his signs onto the sidewalk and he said that Insp. Dingwall walked by, looked at the signs and very curtly said: "those aren't going to stay there." He said Mr. Jones responded that they were going to stay there and that Insp. Dingwall kept walking down the road towards the Rose Garden parkade and said as he left: "I'm not going to argue with you. They're just not going to stay there. In fifteen minutes they'll be gone."

Insp. Dingwall was on his way to the Site Command Centre to discuss options for dealing with the situation. It was then about 8:05 a.m. Mr. Emrich said that those present anticipated Insp. Dingwall's return. After his return, Insp. Dingwall told Mr. Emrich that he was responsible for security at the APEC event. (In fact, although he was second in command in respect of security planning for the entire APEC conference he was not in a command position on campus on November 25.) I believe Mr. Emrich to be a reliable witness and I accept his evidence.

While Insp. Dingwall was at the Site Command Centre, he received information that he thought warranted his immediate return to Green College. He ran the distance to Green College and arrived at about 8:15 a.m. Before leaving the Site Command Centre, Insp. Dingwall made it known that he wanted one of the Deputy Site Commanders to come to Green College and take charge. Although the information that prompted Insp. Dingwall's hasty return turned out to be inaccurate, he nevertheless moved quickly to give the protest at Green College the attention that he thought it deserved. He directed five or six Constables on the security line in the vicinity of Gate 3, adjacent to Green College, to follow him out of the secure zone and over to the Green College sidewalk and lawn area.

By this time, with the motorcades due to arrive shortly, Insp. Dingwall had decided that although the signs and banners would have to go, it was too late to insist that the protesters vacate the site. He believed that there could have been a huge incident and there were not enough officers to remove the protesters. He said the risk at that point was too great.

Other than Mr. Jones' coat rack signs, most signs were anti-APEC and were either hand held or attached to a stick. They were made of either cardboard, paper or plastic. They were decidedly "home-made" and conveyed messages such as "Freedom of Speech," "APEC Kills," "People not Profits," "Stop APEC," and "Shame."

Insp. Dingwall was asked to explain the concern that prompted his action. He said:

> That was the point where two out of the three motorcade routes converged and came in. That was the point of entry that morning, for the motorcades, and the point of exit for the motorcades. Right along Green College it was light fencing, in fact, it was just that eight-foot fencing and--with the small braces that go perpendicular to it. The fence line ended right there. They were right beside the motorcade route, immediately beside the fence, and the motorcade route actually came and--through a series of barricades, through an S-curve, came and came right beside that fence, which would put those motorcades immediately adjacent to that. My concerns were many, including being able to throw anything over that fence; to circumvent the fence by walking around, it ended about 30 yards from that point, they could simply walk around, and stand on the roadway, block the roadway. I was also concerned about the intelligence. Both the information that I received in the weeks leading up to

> APEC, the intelligence I received during APEC, and in particular, the intelligence received that morning about there going to be three attempts to breach our security. There were many, many issues that were playing on my mind. Here we had spent months and, in particular, the last weeks before the 25th, talking about 10 yards up by the Law School that was 75 yards away from that intersection, and the *anguish* that went through all of us dealing with that issue. And now we have protestors standing right beside the entrance to Gate Number 3. Clearly, I didn't anticipate them being there, and clearly it was a significant concern to me. (emphasis mine)

Insp. Dingwall was pressed as to why cardboard signs had to go and he responded:

> Well, I mean, we could start from the first interaction. In my evidence, what I did say, particularly with respect to cardboard signs, is that this was an extremely vulnerable spot for us. And although cardboard signs, in and of themselves, and quite often, would not pose a security risk, I was not prepared to take that risk at that location. That was the first thing that I said. The second thing is that I didn't have the time to evaluate every sign at that moment. The motorcades were imminent. In fact, I believe they were to start at 8:30 arriving, and I didn't have the time. The third thing I said was that--and I have no doubt in my mind, that had I started to evaluate each and every sign, there would have been endless debate. And clearly, that was not the time to get into any sort of debate over these signs. And fourthly, they had the opportunity, if they wished, to go and put them up on Green College, in the windows or on the buildings, if they wished to do so.

Insp. Dingwall said that the objective was to have a safe and secure site for the 18 world leaders. He described it as an absolutely huge event - the biggest thing he had ever worked on with the most complications, and involving about 500 days of planning. He also said "we weren't trying to thwart demonstrations."

When he came back, Insp. Dingwall's first direction to the protesters was to move back off the sidewalk onto the lawn, which they did. Much was made at the hearing of Insp. Dingwall's explanation that this direction was intended to avoid pedestrian traffic being impeded by protesters. The fact was, the way things were structured, there would not be any pedestrian traffic along the sidewalk there, although Green College resident Isabela Varela acknowledged that police officers may have made use of it. I understand the circumstances under which Insp. Dingwall's reference to pedestrian traffic was made and I do not draw the unfavourable inferences from his answer that Complainants' counsel invited of me.

There was a dispute as to the number of Green College residents at the site. I believe 10 to 15 residents were there at 8:15 a.m., about half of them carrying signs and the rest mere observers. I believe the numbers doubled over the next half hour. There were higher and lower estimates but I do not believe anything of significance turns on the precise numbers. Although more police officers gradually arrived, there were always more Green College residents present than there were police officers and, throughout, I believe the ratio was about two to one.

After Insp. Dingwall directed the protesters to move back from the sidewalk, he gave them three options for avoiding seizure of their signs:

1. move to the law school demonstration area;
2. place the signs up against the Green College buildings; or
3. take the signs back into the residence.

Because of the distance from the roadway and the double fence separating protesters from the secure zone outside the law school, my view is that none of the signs would have had any impact whatsoever if they had been placed there. Relocating them there as suggested by Insp. Dingwall was not a meaningful alternative to their display at the Green College site.

It must also be appreciated that, in a conversation late in the evening of November 24, Supt. Thompsett had told Mr. Jones, with reference to Green College, that he could put his signs "anywhere you like there." He told him there was lots of room and they could be displayed anywhere at that location. He suggested the possibility of the fence on Green College property, but not the security fence erected by the RCMP. Supt. Thompsett agreed that it would have been perfectly reasonable for Mr. Jones to conclude from their discussion that it would be fine for him to stand behind the security fence at Green College with his signs.

When it became clear that none of the options presented by Insp. Dingwall were acceptable to the protesters, he said the signs would be seized if they were not voluntarily surrendered and those who resisted would be arrested.

21.3.1. Reasons for Removing the Signs

There was a sharp difference in the evidence between what Insp. Dingwall said he gave as his reason, and what the protesters say he told them. Insp. Dingwall was definite that he said he had a security concern because signs could be thrown over the fence in the path of the motorcades, which included motorcycle escorts.

There were a number of objects nearby, mainly on the lawn. Some were hand held, such as coffee cups. There was a bicycle helmet, knapsack, metal coffee cups, coolers and other similar items. With the projectile issue being foremost in Insp. Dingwall's mind, he was asked why those items were not seized. He said he had not seen them.

Cst. Susanne Cowan was one of the officers Insp. Dingwall directed to assist him. She said that Insp. Dingwall first explained his reasons to the officers and then to the protesters. She testified:

> Q: Okay. All right, and what's the--what does he say to you and the--and the other Constables with you?
>
> A: He advised us that--that we were going to be removing the signs from this area, that that was a security risk and that he was--he explained the reasons, that they could be used as projectiles or--or to hide things behind them.
>
> Q: And--and at this point, is he just talking to you Police Officers?
>
> A: Yes, that's what he advised us.
>
> Q: Okay. And what happens then?
>
> A: Then he went over to where the protestors were, that were gathered there and advised them of the same thing, that he just advised me.
>
> ....
>
> Q: Okay. All right, so he tells you and then you go down and then do you recall any of the wording he used to speak to the protestors?

A: I don't recall specifically, but I--I remained there to--to hear what he had to say. But I don't recall.

Q: Okay, and can you tell us as much as you do recall, of--of the reasons he gave for his concern about the signs? Now this is to the students as opposed to you ahead of time?

A: I do recall that he gave the same explanation as he'd provided for me. And I heard him advise that to the students, that they were--that the signs were a security risk, and that they could be used as projectiles and that the--items could be hidden behind them.

I believe the officer was being truthful when she gave that evidence.

The protesters deny that they received such an explanation. Mr. Emrich said they were told that the area outside Green College was not a designated protest area and that, because the land had been leased to the federal government by UBC, the RCMP were authorized to seize the signs and arrest those who offered resistance.

Jodi Morris was a Masters student in Counselling Psychology and a Green College resident. She carried a hand held 16 x 24 inch cardboard sign that read "Freedom of Speech." She confirmed Mr. Emrich's account of Insp. Dingwall's explanation. She recalled that no reason was given other than that the area had become federal property. She did not recollect any suggestion that the signs posed a danger or a security threat.

Ms. Varela was a Masters student in the Department of Fine Arts and Art History. She carried on a stick a plastic sign that said "APEC Kills." She testified:

> . . . when they kept telling us, you can't have signs, thing like that, and we were saying, on what grounds, with what authority? We were told--we were given a few reasons. One reason was that we were on Crown property. It was explained to us that supposedly the university had leased this property for the duration of the Summit to the Crown. And that because this was Crown property, different rules applied. And the RCMP could basically, I don't know, that basically it was legitimate to tell us not to hold signs on the lawn.

When it was suggested to Ms. Varela that Insp. Dingwall had told the group that they could not have signs because the associated wood and metal objects could be used as projectiles which might pose a danger to motorcycle officers and Internationally Protected Persons, she replied:

> A: I would absolutely deny that. My recollection-and I'm completely clear on this-is that it was never said to me that it was a question of security. It was never said to me that he was afraid that I was going to take apart my sign and hurl something over the fence.
>
> Q: Okay.
>
> A: That was never said to me, because if it had been, I would have complied with him. I would have removed the wooden stick, if that made him feel more comfortable, and I would have just held the plastic sign.

Ms. Varela was on the mark in the answer she gave to the following question:

> Q: Okay. And it seemed to you that the RCMP didn't expect to see Green College residents protesting where they were that morning?
>
> A: That's right. My impression was that it was an enormous oversight on their part that it did not occur to them that this was, in fact, a graduate student residence, and that as students, we might be interested in the events going on on our campus, and that we might want to observe and possibly peacefully protest. . . . So when I came out that morning and they seemed so surprised to see us, I thought, well, you know, they had the opportunity, they considered the possibility of not having us there at all, but they didn't take that.

Michael Thoms was a doctoral student in Canadian History and a Green College resident. Mr. Thoms did not arrive on the scene until 8:30 a.m. He carried two bedsheets to hold or hang for those passing by to see. One featured someone holding jail bars from within, with the caption "APEC's Vision," and the other said "Dictators are not Welcome at UBC." Mr. Thoms said he was told by the officers that he could not display the sheets on the Green College grounds. He was told he could do so either from inside the windows of his residence or from the demonstration area at the law school building. Mr. Thoms described his ensuing discussion with the officers:

> A: I answered that I wanted--that I had the right under the Charter to freedom of assembly and freedom of expression and that I was going to exercise these rights here. And they said, no, you can't. It was a long discussion. In that discussion I pressed them for their reasons. And I was told by one of the Officers that the land in question--this land had been leased or appropriated by the Federal government of Canada and therefore the RCMP could make this request.

Q: Okay.

A: To that I answered, if, in fact, this is Federal land, then the *Charter* definitely applies to this piece of land.

Mr. Emrich, Ms. Morris, Ms. Varela and Mr. Thoms impressed me as honest and credible witnesses. Given what Cst. Cowan said about the projectile issue on the one hand, and what the four Green College residents said on the other hand, how can their divergent views be rationalized? I have concluded that the tensions, feelings and noise levels at the time were such that the parties were not effectively communicating with each other and this explains the sharp difference in evidence. For all these reasons neither was absorbing what the other was saying. Mr. Jones had come to the point where he did not trust Insp. Dingwall. Insp. Dingwall said that the protesters were lecturing him on freedom of speech, the *Charter* and not really listening to what he was saying to them. He saw them as confrontational. In his view, there was a failure of communication that morning. He acknowledged that it was conceivable that his own conduct might have been seen the same way by the people on the other side of the exchange - that maybe they felt he was lecturing to them and not listening to what they had to say. Ms. Morris said there were a lot of things going on at once.

21.4. Seizure of the Signs

Insp. Dingwall made a number of requests for the removal of the signs and allowed time for that to happen. Some complied, but when it became clear to Insp. Dingwall that his directions would not be universally followed, he directed the officers to seize the remaining signs and arrest any who resisted.

Ms. Morris did not want to risk arrest and decided that her only option was to put her sign inside the Green College building.

Ms. Varela said she stood her ground, telling Insp. Dingwall that she was not going to give up her *Charter* rights. Insp. Dingwall reached for her sign and they engaged in what

Ms. Varela called a brief tug of war. Then, not wanting to risk arrest, she let Insp. Dingwall take her sign, although she emphasized that she did not relinquish it willingly.

21.5. Mr. Jones' Arrest

Mr. Jones declined to give up his signs. He took a firm, two-handed grip on one of the coat racks. He told the officers that if they were going to take his signs they should be prepared to arrest him.

Mr. Jones' two signs were not anti-APEC in their message. Indeed, there was a distinction between the "democracy" and "free speech" signs he was trying to display to the APEC delegates passing by in the motorcades, and the specific opposition to APEC that was being communicated by most of the other protesters.

Insp. Dingwall directed two officers to seize the signs and arrest Mr. Jones. Mr. Jones gave some resistance but the arrest, I believe, was carried out in an acceptable manner in the circumstances. In my judgment, the officers used no more force than was necessary to accomplish their objective. Mr. Jones soon realized that his signs were gone and he conducted himself in a reasonable manner.

No fault or responsibility rests with the constables who seized the signs or arrested Mr. Jones. They were following instructions from a senior officer.

21.6. Motorcades Pass By

All the signs were gone by 8:25 a.m. Those that were seized, including the coat racks, were taken to a police storage tent close by. Mr. Emrich said that the motorcades started to come through about five minutes after Mr. Jones had been arrested. Insp. Dingwall said that, at 8:35 a.m. he called for either of Insps. Edwards or Killaly to come and take over.

Although the signs were now gone, the students were still there to protest. Ms. Morris explained that they had to be creative in getting their message across. They had access to red paint that had been brought to paint the signs. Some of them painted their hands red, as Ms. Morris said, "to kind of symbolically represent that there's blood on our hands." They stood as close to the fence as they could and, with their painted hands raised in the air, chanted "free speech" and similar expressions as the vehicles passed.

21.7. Other Officers Arrive to Take Charge

Insp. Killaly said he arrived at about 9:00 a.m. He believed that about half the motorcades had passed at this point. He was told that there had been an arrest and that the prisoner was in custody at the UBC Detachment. He said the members of the protest group had paper signs and were shouting and yelling and holding up APEC signs. It was his assessment that everything was well in hand and he left after the motorcades had passed. It was his belief that those protesting at the Green College site were not a security threat. Insp. Killaly was not very familiar with the arrangements for demonstrations. He was unaware whether protesting was allowed in the area and he explained that he had no part in the initial planning that had made those arrangements.

Insp. Killaly said that, when he arrived, he did not believe anyone was in charge and so he assumed that responsibility. The fact was, however, that the Zone Commander, S/Sgt. Moloci, was already there, and in charge. Insp. Killaly did not know S/Sgt. Moloci. They had never met. Insp. Killaly said he had heard his name during the hearing but could not say who he was. The two officers did not meet at the site, although they were obviously there at the same time, each holding major responsibilities in the security operation for that day. S/Sgt. Moloci estimated that when he arrived there were about six police officers present and 10 or 11 protesters. He was brought up to date by one of the constables as to what had happened, including the Jones arrest. S/Sgt. Moloci was asked what happened next:

> A: It was obvious to me that the--the demonstrators that were there were pretty agitated and they were calling at--towards me to come and talk to them and I--I went and talked to them.
>
> Q: And what was that conversation?

A: They basically were upset that--they said to me they were on their side of the fence and they were upset that their friend got arrested and they felt that, since they stayed on their side of the fence, they had followed the rules and should be allowed to keep their signs. Based on the number of policemen and the situation at that time, I--I didn't feel it inappropriate to not let them keep their signs.

Q: Okay. Is there any particular protestor you were talking to or--that you know or?

A: I--I was basically talking to them all, they all kind of crowded around and they were all there. And one of them asked me if they could go in and make signs and I said sure.

Q: Okay.

A: I just told them I--I didn't want them breaching the fence or--or throwing anything over the fence and as long as they followed those rules, they could stay there.

Q: Okay. And as a result of that, what did they do?

A: Some of them went inside, some of them started to--holding onto the signs and some went back inside and made signs and--and they did their thing right there and they seemed--they seemed happy with that and they didn't breach the security, while I was there.

That result confirmed for S/Sgt. Moloci his initial assessment that the student protesters did not pose a threat and that the ratio of police officers to protesters was such that the protesters' presence did not create a risk.

Some of the signs on display after S/Sgt. Moloci gave the green light were retrieved from the residence while others were quickly made from scratch. The students asked if the signs that had been seized and taken to the tent could be returned immediately but they were not made available in time to be used during the motorcades. Zone Commander Moloci left the Green College location once the motorcades had passed.

21.8. Questions to be Answered

My Terms of Reference require me to decide:

1. whether Insp. Dingwall's conduct in requiring the relinquishment of all physical signs of protest at Green College, and in directing the arrest of Mr. Jones, on the morning of November 25 was appropriate to the circumstances; and

2. whether that conduct was consistent with respect for the *Charter*.

I begin my consideration of those two questions by affirming that Supt. May was correct when he said the residents of Green College had the right to protest on the morning of November 25 at Green College, so long as they did not create a security risk. Resolving whether the residents and their signs posed a security risk will inexorably lead to the answers to these two questions.

21.9. A Precipitous Action

Insp. Dingwall took no time at all to decide that the protesters and their signs had to move from the Green College site. He made his observation, walked the short distance to the site and immediately announced his decision. He was asked at the hearing what efforts he had made to determine who these people were. He said he made no effort to determine who they were and that knowing who they were would have made no difference to him. He said that, at 8:15 a.m., with the motorcades due to arrive at 8:30, he did not have the option of learning whether those preparing to protest were university students, graduate students, law students or people with no history or affiliation with anti-APEC groups. He said such inquiries could be made only if time were available. It is unfortunate that, in nearly two years of close involvement in the security planning process, Insp. Dingwall had not ascertained the background of the Green College residents.

Further, in making his decision that people and signs had to go (though he subsequently allowed the people to stay), Insp. Dingwall gave no consideration to the *Charter* and what rights it afforded to those who wished to display signs of protest outside their home. In his evidence about this incident, he posed the question: "was I specifically thinking of the *Charter* at this time?" He answered his own question by saying: "I don't believe so. My mind was on what was reasonable under the circumstances."

21.9.1. A UK Perspective

London Metropolitan Police officers French and Caldwell were asked whether, in their experience, signs and banners carried by protesters in a location similar to the Green

College site, some suspended on coat racks and others on wood sticks, and with motorcades scheduled to arrive, would be a concern to police. Officer French was the first to answer, followed by Officer Caldwell:

> STEPHEN FRENCH: I think they are an obvious ingredient inasmuch as a sign has a potential for being used as a missile. So there would be a degree of concern that people were carrying signs on sticks, if we're talking about things on--on wooden poles or sticks. So, yes, there would be a degree of concern associated with that. I think there would be a matter of application of judgment. You know, if you had a very small sign on a very large stick, I'd be rather more concerned than, you know, a large sign on a small, thin stick. You know, there's a degree of professional judgment being made at the time.
>
> Q: Would one of your tactical options be to ask that those signs be removed?
>
> MR. FRENCH: I think if we're talking about this situation, as we are, within the context of London or the UK, we would have to--we would have to think about what the legal position might be as far as asking people to--or taking signs away from people.
>
> Q: Mr. Caldwell?
>
> MICHAEL CALDWELL: I think the concern might well be, are the signs being used to mask some form of other behaviour? Are they actually using the signs to hinder the view of Police Officers in order for them to achieve something else? But that's very much dependent on the--what's actually the situation there at the time. But, again, it all goes back to the same issue, which is the judgment based on the operational skills of the officers present there, which is why, from a given perspective, we would try and deploy Public Order trained officers there who have got the--that operational skill.

Critical in assessing the presence of a security concern or risk, according to the officers, would be the application of the professional judgment of the police officer, based on his or her operational skills, taking into account the existing situation, including legal issues involved in taking signs away from people.

21.9.2. A Lack of Objectivity

It is my opinion that, in this instance, Insp. Dingwall was not in a position to objectively apply his professional judgment to the task of determining whether a security risk existed. As the number two officer in the line of responsibility for planning security for the APEC conference, he had to have realized that he would carry a major share of the responsibility for a situation that his counsel described as having "slipped through the cracks;" that is, allowing the presence of protesters at the Green College location. Call it a gap, an oversight or whatever, I believe that Insp. Dingwall, in making his decision in such haste, was influenced by the extent of his own responsibility for that oversight.

I am satisfied that there is an additional factor that was bound to affect Insp. Dingwall's ability to objectively apply his professional judgment to the situation he faced. He referred in his testimony to the *anguish* that he said he and others went through in the last weeks before November 25 in dealing with the placement of the law school fence. That anguish could only have resulted from Mr. Carle's intervention, with which Insp. Dingwall was fully familiar: he was part of the November 13 site tour when Mr. Carle rejected the agreed upon Thompsett/Pavlich line. In his testimony, Insp. Dingwall described Mr. Carle as a "very powerful," and "outspoken" man. Mr. Carle was to arrive on campus on the morning of November 25 in a vehicle travelling close to the one carrying Prime Minister Chrétien. Mr. Carle had major host responsibilities that morning at the museum from 8:30 a.m. onwards. In my view, in addition to the fact that Insp. Dingwall was caught off guard by the presence of the protesters, the *anguish* caused to him and others by Mr. Carle was bound to affect the objectivity required of Insp. Dingwall in the decision making role he assumed that morning at Green College.

So quick was Insp. Dingwall's decision that he gave no attention to who the protesters were or their propensity for violent acts. Further, and most importantly, he took no time to think about the "legal position" as referred to by Officer French which, in the situation at UBC that morning, meant section 2(b) of the Charter which guarantees "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication."

Counsel for the 44 RCMP officers submitted that APEC week in November 1997 was the largest and most difficult security undertaking in Canadian history. The foundation for the analysis of all complaints against the RCMP, say counsel, must be the burden resting with officers such as Supt. May and Insp. Dingwall on November 25 to prevent loss of life, assassination attempts, kidnappings, hostage takings or other international incidents. I accept that that is so. That cannot mean, however, that the police conduct on that day, and particularly at Green College that morning, should escape the scrutiny of this Commission whose mandate includes an assessment of the appropriateness of that conduct.

21.10. Was Insp. Dingwall's Conduct Consistent with the *Charter*?

I now turn to consider whether the officers' conduct in removing the signs from the protesters was consistent with respect for section 2(b) of the *Charter* and if so, whether it was justified.

There can be no doubt that the display of signs outside Green College was constitutionally protected political expression and that the removal of the signs was inconsistent with freedom of expression. The protesters were lawfully protesting in an area where they were entitled to be, and where Supt. Thompsett had told Mr. Jones they were entitled to be. Therefore, the removal of signs was inconsistent with section 2(b) of the *Charter*.

21.10.1. Restriction Must be Prescribed by Law

The real issue is whether the removal of the signs was justifiable under section 1 of the *Charter*. If the government wishes to justify a restriction on a *Charter* right under section 1, it must first establish that the restriction is "prescribed by law." There are several statutory provisions not referred to by counsel which appear to authorize the RCMP to take reasonable security measures to protect Internationally Protected Persons.

For example, the Canadian government is a signatory to the *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (1973),* which came into force on February 20, 1977. This Convention requires Canada to criminalize certain offences against Internationally Protected Persons.

Canada has met its treaty obligations by incorporating certain provisions into the *Criminal Code*. Section 424 of the *Criminal Code* provides that:

> 424. Every one who threatens to commit an offence under section 235 [murder], 266 [assault], 279 [kidnapping] or 279.1 [hostage taking] against an internationally protected person or who threatens to commit an offence under section 431 is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Section 431 provides that:

> 431. Every one who commits an attack on the official premises, private accommodation or means of transport of an internationally protected person that is likely to endanger the life or liberty of such person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Section 18(1)(a) of the *RCMP Act* sets out the basic duties of the RCMP to preserve the peace and to prevent crime and offences against the laws of Canada:

> 18(1) It is the duty of members who are peace officers, subject to the orders of the Commissioner,
>
> (a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody.

Given section 18(1)(a) of the *RCMP Act*, it is clear that the RCMP have a duty to take appropriate steps to prevent the *Criminal Code* offences referred to above.

In addition to the *Criminal Code*, section 2 of the *Security Offences Act (Canada)* provides that:

> 2. Notwithstanding any other Act of Parliament, the Attorney General of Canada may conduct proceedings in respect of an offence under any law of Canada where ...
>
> (b) the victim of the alleged offence is an internationally protected person within the meaning of section 2 of the Criminal Code, ...

Section 6(1) of the *Security Offences Act (Canada)* then provides that:

> 6(1) Members of the Royal Canadian Mounted Police who are peace officers have the primary responsibility to perform the duties that are assigned to peace officers in relation to any offence referred to in section 2 *or the apprehension of the commission of such an offence*. (emphasis added)

Section 6(1) makes it clear that the RCMP have a duty to take appropriate security measures to prevent "apprehended" offences against Internationally Protected Persons, although I have little doubt that they must act reasonably when doing so. The existence of such a duty at common law was confirmed in *Knowlton*, which is discussed in Chapter 20.

In my view, the RCMP were authorized, by virtue of section 6(1) of the *Security Offences Act (Canada)* and section 431 of the *Criminal Code* to direct the removal of Mr. Jones' two coat racks and any sticks which might have been used as dangerous projectiles. In contrast, I do not believe that the RCMP were authorized to remove any cardboard or plastic signs which did not pose a "real risk of imminent harm." In my view, while the removal of potential projectiles was "prescribed by law" within the meaning of section 1 of the *Charter*, the removal of cardboard and plastic signs was not.

The displaying of signs was a lawful, constitutionally protected act of political expression. Before removing their signs, Insp. Dingwall should have considered whether infringing the protesters' *Charter* rights was justifiable in the circumstances. He did not do so. In my view, Insp. Dingwall committed the error referred to in *Brown*, discussed in Chapter 20. That is, he failed to recognize that the existence of a police *duty* to do something does not mean the police have the right to act without restriction in furtherance of that duty. Rather, a police duty - in this case to provide for the security of Internationally Protected Persons - gives rise to a police power to take reasonable steps to carry out that duty. It does not confer on police any power that cannot be justified under the ancillary powers test out in *Waterfield* and discussed in *Knowlton* (see Chapter 20). Although there may have been a "real risk of imminent harm" in respect of Mr. Jones' coat racks and at least some of the sticks to which signs were attached (although that is perhaps questionable), the removal of the other signs, which could not have been used as dangerous projectiles, was not authorized by statute or the common law test set out in *Waterfield* and, therefore, the RCMP were not entitled to remove those signs.

I simply cannot conclude that Insp. Dingwall had reasonable grounds for believing that it was necessary to remove the cardboard and plastic signs carried by protesters in order to ensure the safety of the Internationally Protected Persons. They posed no potential risk, much less a "real risk of imminent harm" to their security.

In my view, Insp. Dingwall was under considerable stress because of his experience with Mr. Carle and because he had not anticipated that protesters would gather in the Green College area and he carried a major share of responsibility for that planning gap and any potential adverse consequences. In the circumstances, he was unable to apply objectively his professional judgment and properly assess whether the signs represented a real risk to the motorcades and whether interfering with the protesters' *Charter* rights was justifiable. As a result, he did not differentiate between signs which presented a risk and those which did not. Although it was suggested that the RCMP did not have time to argue with the protesters about each and every sign, I believe they were in a position to respect the protesters' *Charter* rights as much as possible by simply removing items such as those sticks and coat racks that presented a real risk and allowing the protesters to retain signs and banners.

21.10.2. Restriction Must be Demonstrably Justified

Having determined that the removal of the coat racks and sticks was "prescribed by law," I must consider whether the removal was "demonstrably justified in a free and democratic society" within the meaning of section 1 of the *Charter*. This involves a consideration of whether the RCMP's objective was "pressing and substantial" and whether the impugned conduct satisfied each element of the *Oakes* test (see Chapter 7).

21.10.2.1. Pressing and substantial objective

As to whether the RCMP had a "pressing and substantial objective", the need to protect Internationally Protected Persons is recognized by international treaty and by domestic statutory and common law. I have no doubt that ensuring the security of these people and other diplomats in the passing motorcades was a "pressing and substantial objective." Although Insp. Dingwall may have had additional motivations for wanting protest signs removed from Green College, his primary objective was to secure an area which, due to what I can only characterize as a severe planning blunder, had not been made part of the secure zone, despite the vulnerability of the location.

21.10.2.2. Rational connection

The next hurdle for the RCMP under the section 1 analysis is whether there was a rational connection between the objective of protecting the Internationally Protected Persons and the removal of the coat racks and other sticks that had signs attached to them. In my view, there was such a connection, as I am prepared to assume that the coat racks and sticks could have been used as projectiles and so posed a threat to the passing motorcades.

21.10.2.3. Minimal impairment

Next is the "minimal impairment" test. I am satisfied that the removal of the signs did not impair the right to free expression "as little as possible." In my view, it would have been a simple matter for the RCMP to have asked Mr. Jones and the other protesters to surrender any objects that could have been used as projectiles, on the understanding that they would be entitled to keep their signs. If any protesters refused to comply, the RCMP would have been justified in removing potential projectiles from signs where possible, and allowing the protesters to keep their signs.

This was not a case of one or two officers facing a teeming crowd of protesters. There was roughly one police officer for every two protesters. Furthermore, only about half of those protesters were carrying signs, and some of those signs were not affixed to potential projectiles. In other words, for every protester carrying a potential projectile, there was more than one police officer to assist in either removing the potential projectile or in ensuring that it was not used as a projectile. Given this strong police presence, the most prudent course of action would have been to allow the protesters to keep their signs, potential projectiles and all, as there were sufficient officers available to ensure that no coat racks or other objects were hurled over the fence. Instead, Insp. Dingwall ordered the indiscriminate removal of the signs, without due regard for *Charter* rights and for the fact that a strong police presence was available to keep the peace. His conduct did not "minimally impair" the protesters' rights guaranteed by section 2(b) of the *Charter* and, accordingly, is not justifiable under section 1 of the *Charter*.

I am bolstered in this conclusion by the evidence of S/Sgt. Moloci who testified that, even though the protesters were "pretty agitated" and "upset" when he arrived in the area, he was satisfied, "based on the number of policemen and the situation at that time" that it was not appropriate to deny the protesters the right to display their signs.

21.11. Appropriateness of the Conduct

It is true that police officers are often called upon to make very difficult decisions in the heat of the moment. Nevertheless, reasonableness and common sense are the touchstones against which I must assess whether an acceptable level of professional judgment was exercised in a given situation. In this instance, there was no such acceptable level of professional judgment used. This shortfall is likely explainable by Insp. Dingwall's inability to be objective in arriving at his decision. In my opinion, Insp. Dingwall's conduct was not appropriate to the circumstances. He acted with undue haste that morning. He did not take into account the relevant factors, and in particular the *Charter* rights of those who wanted to protest outside their residence with signs and banners.

21.12. Arrest Without Warrant

Before discussing the arrest of Mr. Jones, I will describe the authority given to police by the *Criminal Code* to arrest without a warrant, and some of the legal constraints on that authority, as those are issues which arise in respect of the Jones arrest, and in subsequent chapters of this report.

Section 495(1) of the *Criminal Code* authorizes a police officer to arrest without warrant:

> (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence,
>
> (b) a person who he finds committing a criminal offence....

Section 495(1)(b) applies to all criminal offences, but (a) applies only to indictable (more serious) offences. However for the purpose of these arrest powers, the definition of indictable offences is expanded to include hybrid offences (offences that the Crown may choose to proceed with either by indictment or by summary procedure): *Interpretation Act*, R.S.C. 1985, c. I-21; *R. v. Huff* (1979), 50 C.C.C. (2d) 324 (Alta. C.A.).

Mischief, assault and obstruction of a police officer are examples of hybrid offences for which police may arrest under section 495(1)(a).

The first branch of section 495(1)(a) ("a person who has committed an indictable offence") deals with situations where the arresting officer personally witnessed an offence being committed but was unable to stop it or make the arrest before it was completed: *R. v. Klimchuk* (1991), 67 C.C.C. (3d) 385 (B.C.C.A.). Although *Klimchuk* says that the officer must have actually witnessed the indictable offence and therefore "know" that it occurred, I do not interpret that case to mean that the officer must be correct in the conclusion that an indictable offence has been committed. That is, the arrest will not become unlawful simply because the person is not eventually convicted of an indictable offence. Rather, I believe the appropriate test is whether it would have been apparent to a reasonable person that such an offence had been committed.

The second branch of section 495(1)(a) ("a person who . . . he believes has committed or is about to commit an indictable offence") deals with situations where the officer does not personally witness the offence or where the offence has not yet occurred. In those cases the officer may rely on information from others and arrest on the basis of personal belief, if that belief is based on reasonable and probable grounds: *Klimchuk; R. v. Biron* (1975), 59 D.L.R. (3d) 409 (S.C.C.). To satisfy this requirement:

1. the officer must subjectively believe that there are reasonable grounds for the arrest; and
2. those grounds must be objectively justifiable. In other words, a reasonable person in the officer's position would conclude that there were reasonable and probable grounds for the arrest: *R. v. Storrey*, [1990] 1 S.C.R. 241.

Section 495(1)(b) ("finds committing an offence"), which applies to all criminal offences, authorizes an arrest without a warrant where an officer finds a person apparently committing an offence. The officer's power to arrest is based on personal observation. The circumstances that were apparent to the peace officer at the time the arrest was made are what will determine the validity of the arrest: *Biron*.

The Supreme Court of Canada has clarified that the expression "finds committing an offence" requires an assessment of the circumstances that would have been apparent to a reasonable person placed in the circumstances of the arresting officer at the time: *Roberge v. The Queen* (1983), 4 C.C.C. (3d) 304 (S.C.C.).

But the existence of reasonable grounds does not end the matter because even where grounds for arrest exist, section 495(2) of the *Criminal Code* prohibits an officer from making such an arrest if the public interest may be satisfied without the arrest. This limitation on the power to arrest without warrant is discussed further in Chapter 25.

In summary, for present purposes, I believe there is little practical difference between the tests applicable to section 495(1)(b) and the two branches of section 495(1)(a). In all cases, the law is, in effect, that a police officer may arrest without warrant, for any criminal offence:

- if the officer subjectively believes, based on personal observation or otherwise, that an offence has been committed, is being committed or is about to be committed; and
- if that belief is objectively reasonable in the circumstances.

21.13. Jones' Arrest was Appropriate

As I have found, Insp. Dingwall ordered the indiscriminate removal of all signs at the Green College location. I have concluded that doing so was both inappropriate and inconsistent with respect for the *Charter*. Notwithstanding that finding, I accept that Insp. Dingwall held an honest and reasonable belief that Mr. Jones' coat racks presented a threat to security. He was therefore entitled to direct the removal of the coat racks by virtue of his common law power to protect life and property and his duty to ensure the security of the motorcades.

Mr. Jones, however, gripped the coat racks and told the officers that, if they were going to take his signs, they would have to arrest him. Insp. Dingwall then directed the officers to seize the coat racks, signs and all, and arrest Mr. Jones. Although Mr. Jones would have been perfectly entitled to resist the removal of his signs had they been displayed under circumstances that allowed for their separation from the coat racks, which they were not, he was not entitled to resist the removal of the coat racks, as they presented a credible security risk. Once Insp. Dingwall saw that Mr. Jones was not prepared to release the coat racks, to which the signs were attached, I believe he had the necessary grounds to direct the arrest pursuant to section 495(1)(b) of the *Criminal Code*, as it would have been apparent to a reasonable person standing in Insp. Dingwall's shoes that Mr. Jones was attempting to prevent the officers from carrying out their duty.

I am satisfied that, although it would have been more prudent for Insp. Dingwall to have directed several of the available officers to stand beside the coat racks as a precaution, it is obvious to me that he never thought of that and that he saw the seizure of the racks as his only alternative to them remaining as potential projectiles. Unfortunately the signs were attached to them in such a way that they could not have been removed separately for "hand held" use by Mr. Jones and his neighbours. I conclude that the RCMP were entitled to arrest Mr. Jones and that they used no more force than necessary to effect the arrest.

I reach the conclusion that the arrest was appropriate to the circumstances with considerable reluctance. Mr. Jones is not a man of violence. His signs were offensive to no one. His attempt to post them on the security fence had been denied, albeit for good reason, so he then applied his ingenuity in fastening them to the racks. However, for reasons I have explained, Insp. Dingwall lacked objectivity and that prevented him from applying reasonableness and common sense to the scene before him, with the result that the "surrender the racks or be arrested" order was given – an order that, under the circumstances that existed at the time, I am bound to conclude, as a matter of law, the Inspector was entitled to give.

22. COMPLAINT CATEGORY 10: MUTTRAY & DOUCETTE ARRESTS

On the morning of November 25 Jamie Doucette took a walkie-talkie to Gate 3 where the East Timor Alert Network (ETAN) planned a protest and symbolic arrest of President Suharto of Indonesia. Mr. Doucette was arrested. Some time later Annette Muttray went to Gate 3, also with a walkie-talkie, and she too was arrested. Mr. Doucette and Ms. Muttray complained about their arrests and also that their bicycles and a backpack were not secured by the police.

22.1. Protest Preparations

Mr. Doucette and Ms. Muttray were UBC students who wanted to express their opposition to APEC and the holding of the APEC leaders' meeting on campus. Although neither student was deeply involved in the affairs of APEC Alert, their interest in the group accelerated in the week leading up to November 25.

Mr. Doucette attended workshops and discussion groups sponsored by APEC Alert. He helped set up the tents at the Museum of Anthropology and, in the three or four days before the leaders' meeting, he volunteered in a communications role for APEC Alert by using a walkie-talkie to keep in touch with others performing various tasks on campus.

Ms. Muttray set up her own tent in the tent city that had been established on campus, at first for use by others, but she stayed there herself the night of November 24.

Late in the evening of November 24, Mr. Doucette and Ms. Muttray were at the Student Union Building, with about 200 others. Arrangements were made for many of them to participate in the events planned for the following day. Both Mr. Doucette and Ms. Muttray volunteered to be part of a "peacekeeping communications type of group" which was given access to three walkie-talkies for the next day. The group decided to leave one of the walkie-talkies at a table near the tent city and to issue the other two to members of the group who would be on the grounds assessing events as they occurred.

Ms. Muttray said they decided to have one of the roving units go to the vicinity of Gate 3 the next morning where ETAN planned a demonstration, the focal point of which was to be an attempted citizens' arrest of President Suharto. Neither Ms. Muttray nor Mr. Doucette were members of ETAN but they were acquainted with some of those associated with that group.

Ms. Muttray said that the purpose of observing the ETAN rally was to witness any arrests and assess, based on the ETAN rally, how the other civil disobedience actions planned for November 25 would go. She added:

> Like, would they be, you know, peacefully arrested, or would there be, you know, a big--I don't know, like would police react very aggressively. And depending on that, I think, people would have, you know, taken that information and just made up their own mind about whether they would want to do civil disobedience or not; because people--you know, some people are happy to put themselves in certain danger, and other people don't.

Ms. Muttray said the plan was to relay the information gathered by observing the ETAN rally back to tent city via walkie-talkie where those involved in organizing the noon rally could then talk about what had been learned from the ETAN rally.

22.2. Doucette at Gate 3

In the morning, Mr. Doucette was chosen to go to the Gate 3 area, observe the ETAN rally, gather information and report back to the APEC Alert table via walkie-talkie. He left the tent city area at about 9:00 a.m. and rode his bicycle to the corner of Newton Crescent and Chancellor Boulevard. As planned, he was in communication, over a three-way line, with those back at the APEC Alert table where Ms. Muttray had remained. He said he reported such information as the number of demonstrators; media representation; the extent of the police presence; and arrests being made.

Jonathan Oppenheim, a leader of the APEC Alert activities, testified that the principal reason for deciding to send an observer to the ETAN rally on November 25 was to ensure that the civil disobedience planned for the noon rally could be carried out safely. Because

ETAN's morning event was substantially the same as what APEC Alert planned for later in the day, "if their action went safely, then we could learn from that" and if something went wrong, lessons could be learned from that as well.

22.3. Crowds Pushing onto the Road

While Mr. Doucette was roaming around the periphery of the crowd at Gate 3, the police were having a difficult time keeping the road open. Cst. Robert Fulks described what he found when he first arrived at Gate 3 between 8:30 a.m. and 9:30 a.m. A protest was in progress, with several RCMP members lined up along the curb and a large crowd of protesters trying to push through the police line onto the road. He believed they intended to block the road. He helped maintain the security of the roadway but the protesters became very aggressive, pushing like a wave, alternately escalating and then dying down.

One RCMP member said it was difficult for the police to control the surges of protesters onto the road, though he thought they had succeeded.

S/Sgt. Stewart said that Insp. Edwards was in command at the site. He said that the Quick Response Teams were brought in because the world leaders had arrived at the Museum of Anthropology and the protesters were blocking the road. He said that when he arrived at about 9:00 a.m., only one lane of traffic remained open. The crowd was growing and he estimated that, by the time the rally concluded, it numbered between 300 and 400. S/Sgt. Stewart testified that the police had received information that ETAN members would try to get through the fence, confront President Suharto, and arrest him. He said that an ETAN member had read an arrest warrant and there followed a dialogue about why the police would not allow the protesters through the line. S/Sgt. Stewart was asked to describe the gist of that dialogue:

> That we were wrong in supporting a murderer, in the form of Suharto. That we were violating the law by protecting the--the IPP's, in particularly, Mr. Suharto. That they had a right as Canadian citizens to arrest him as a war criminal.

When he was asked if this was a congenial discussion, S/Sgt. Stewart said it went from serious discussions to, at some times, rage that the police were not allowing this to happen. He said it got to the point where some people began to push on individual police officers, or tried to slip between two police officers to get onto the roadway, but they were arrested and never made it through the fence.

S/Sgt. Stewart said the pushing continued but the police were able to force the protesters back. Although the police remained in control throughout, I am satisfied that the situation was, as indicated by S/Sgt. Stewart, very difficult for them.

22.4. Doucette's Arrest

While moving about the crowd, Mr. Doucette attracted the attention of the police. According to S/Sgt. Stewart, he was speaking into his jacket where his walkie-talkie was located, not unlike police officers working in the drug squad's plainclothes unit sometimes do.

One of those who had Mr. Doucette under surveillance was Cst. Fulks. He said police had been told at a Threat Assessment Group briefing the previous day that the protesters would be "using portable radios to co-ordinate efforts to frustrate the police activities."

Cst. Fulks reported Mr. Doucette's actions to S/Sgt. Stewart. Together they observed him as he continued his movements and talking into his jacket. Cst. Fulks said he appeared to be "communicating with other people."

S/Sgt. Stewart described his encounter with Mr. Doucette after he had decided to have a talk with him:

> I made a number of conclusions at that time and asked him - told him that I wished to speak to him and began moving towards him on foot. He spun around on his bike - turned his bike around and rode away and, as he rode away, told me to F-off.

S/Sgt. Stewart said that, if Mr. Doucette had talked to him, "things might have been totally different." Cst. Fulks, who was present when Mr. Doucette took off on his bicycle, described Mr. Doucette as having taken evasive measures to stay away from the police. Mr. Doucette explained his departure as follows:

> And I guess I sort of saw Staff Sgt. Stewart walking, sort of in a southeasterly direction, and then he sort of turned towards me, and I guess kind of made a gruff, sort of a--not a charge, but a, like a--like almost like a grab, but he was too far away to really actually grab me, but sort of this kind of like--like he was about to start running after me or something like that. At that point, I just sort of, like, got on my bike, and I think I--remarked something, like, what the fuck-pardon me-or something along the lines of that.

Mr. Doucette said he told S/Sgt. Stewart to "fuck off" because he had seen S/Sgt. Stewart pushing people around arbitrarily. He did not intend to be pushed arbitrarily, so he left the area swiftly.

At that point, S/Sgt. Stewart concluded that the reason the police were having such difficulty keeping the crowd from obstructing the roadway may well have been because Mr. Doucette was providing the protesters with specific direction. S/Sgt. Stewart decided that, by directing and guiding the crowd, Mr. Doucette was obstructing the police in their duty to keep the road open and he decided to have him arrested. S/Sgt. Stewart said that Mr. Doucette's profanity did not influence that decision. He said if he had arrested all the people who had sworn at him that day there would have been 1,000 people in custody. Rather, one of the key factors in his decision to arrest Mr. Doucette was the fact that he "took off." S/Sgt. Stewart said that, in his opinion, normally a person who is using a cell phone for a lawful purpose would not react by riding away but would speak with a police officer who had asked to talk. In accepting responsibility for Mr. Doucette's arrest, S/Sgt. Stewart explained:

> My direction was to arrest him, because I felt, and I still believe, that he was controlling the crowd. And when the crowd was moving back and forth out onto the road, that he was part of the--the reason that we would push the crowd back onto the--off the open roadway. And then it would move on to a different location. And considering the intelligence information I have--I had, and his actions, and the fact that he fled from me, and the fact that the crowd was moving in that manner. I made the--came to the conclusion, that the crowd was being controlled by him, using a radio.

S/Sgt. Stewart said that, being on foot, he would not have been able to catch Mr. Doucette, who was on a bicycle, so he asked Acting Sgt. Rainey of the VPD to make the arrest. Acting Sgt. Rainey recruited VPD Bike Squad officers for this purpose and those involved from that squad in the arrest were Csts. Kris Wrathall, Leonard Smith and Ronald Bieg. S/Sgt. Stewart was wrong in his conclusion that Mr. Doucette was guiding, directing and controlling the crowd. He was doing what he, Ms. Muttray and Mr. Oppenheim said he was doing and that did not involve directing the crowd of protesters who were creating a difficult and, at times, tense situation for the police at Gate 3. Mr. Doucette confused the issue, however, by giving a false statement to the arresting officers. He is recorded on a video taken at the time of his arrest, saying "I was trying to control the crowd with the walkie-talkie." When pressed at the hearing on this issue, he said he was simply acting as a "peace observer," available to do what he could to ensure that the crowd acted in an ordinary, peaceful manner. That is not what he was doing. He was observing the events and reporting back to the APEC Alert table. He was not influencing the protesters' action in either negatively or positively.

22.5. Muttray's Arrest

22.5.1. Who Directed the Arrest?

I now turn to the circumstances surrounding the arrest of Ms. Muttray. The issue I must first resolve is whether the arrest resulted from a decision made by Acting Sgt. Rainey of the VPD or by S/Sgt. Stewart. When Mr. Doucette was arrested and his group lost contact with him over the walkie talkie, they decided that Ms. Muttray would go to Gate 3 to find out what had happened. She took one of the remaining walkie-talkies, leaving the other one at the table so that she could remain in communication with the group. In her search for Mr. Doucette, Ms. Muttray talked to both protesters and police officers, but was unable to locate him. As she searched, her conversations with her associates back at the tent were overheard by VPD officers Bieg and Wrathall, who now had Mr. Doucette's walkie-talkie.

I accept Ms. Muttray's evidence that she had no control over the actions at the ETAN rally: her sole purpose in being there was to find out what had happened to Mr. Doucette. I also accept her evidence that she had stepped back from the police line and was speaking into the walkie-talkie when she was grabbed by both arms, from behind, by two officers who told her she was being arrested.

S/Sgt. Stewart testified that Cst. Bieg had reported to him on the conversation that had been overheard between Ms. Muttray and the APEC Alert group. On the basis of that information, and his conclusion that Ms. Muttray was involved in giving direction to the crowd, he directed that she be arrested.

S/Sgt. Stewart acknowledged that he never saw Ms. Muttray and, in particular, never saw her using the walkie-talkie. He explained his reaction to what Cst. Bieg had reported to him:

> I just thought, you know, holy smoke. You know, I was right. Now we should get rid of the second person and we'll be able to clear this up.

During Ms. Muttray's conversations with those back at the APEC Alert table, Cst. Wrathall had called Acting Sgt. Rainey over to the walkie-talkie to hear what was being said. While listening, Acting Sgt. Rainey looked out on the crowd and saw Ms. Muttray holding the radio in her hand and speaking into it. Acting Sgt. Rainey concluded that Ms. Muttray was part of the protest organization. He said she "appeared to be assessing the actions of the police, assessing their strengths and weaknesses." He said this led him to believe that she was obstructing the police by organizing the crowd and the illegal blocking of the road. He also believed that, by using the walkie-talkie, she was able to "strengthen the crowd by calling others in, if necessary."

Acting Sgt. Rainey was incorrect in his conclusions about Ms. Muttray. Nevertheless, he said that, because of his concerns, he talked to Cst. Wrathall and they decided Ms. Muttray was arrestable for obstructing a police officer and breach of the peace. The two officers ran the proposed charges by VPD Insp. Chris Offer, who approved the arrest. Although S/Sgt. Stewart did direct that Ms. Muttray be arrested, it is clear to me that Acting Sgt. Rainey decided, completely independently of S/Sgt. Stewart, that she was to be arrested:

> Q: Sir, turning--turning to the issue of Ms. Muttray's arrest. I take it, sir, from your information Officer Stewart played no role in any decision to arrest her, that was entirely your decision.
>
> A: He may have been advised of the arrest. But no, it was not his decision to arrest.

I conclude that, although the VPD officers may have discussed the matter with S/Sgt. Stewart and S/Sgt. Stewart may have directed that an arrest be made, Acting Sgt. Rainey made an independent decision. S/Sgt. Stewart did acknowledge that he had formed the opinion that Ms. Muttray was committing the criminal offence of obstructing police and he directed that she be arrested. However, as it turned out, Ms. Muttray's arrest resulted from a decision made independently by Acting Sgt. Rainey of the VPD, over whom I have no jurisdiction.

Accordingly, it is not necessary to consider this aspect of Ms. Muttray's complaint any further.

22.5.2. Cst. Hodder's Role

The arrest of Ms. Muttray occurred pretty much as she explained it. Acting Sgt. Rainey said that, with Cst. Wrathall unable to assist because he was holding the walkie-talkie, he asked nearby RCMP Cst. Robert Hodder to assist him in making the arrest. Cst. Hodder, of the Vernon Detachment, was assigned that morning to general security duties within the zone where Gate 3 was located and, specifically, to control movement through a nearby checkpoint. Ms. Muttray was actually taken into custody by Acting Sgt. Rainey and Cst. Hodder. Cst. Hodder said he knew nothing of the alleged conduct underlying Ms. Muttray's arrest and relied solely on the information of Acting Sgt. Rainey.

The evidence is clear that Acting Sgt. Rainey, not S/Sgt. Stewart, enlisted Cst. Hodder to assist in the arrest. Acting Sgt. Rainey testified that he had asked a nearby RCMP constable to give him a hand in arresting the woman with the walkie-talkie:

> Q: Okay. And had Constable Hodder been sort of participating in your deliberations, leading to your decisions to arrest?
>
> A: No, he was not.
>
> Q: All right. Okay, so you--you recruit, as it were, a Constable Hodder and what do you do then?
>
> A: We walked out and walked over to the woman in the crowd. I advised I was a Police Officer and that she was under arrest for obstruct.

I assign no responsibility for Ms. Muttray's arrest to Cst. Hodder. His counsel correctly pointed out that a police officer who is directed to carry out or assist in an arrest is entitled to assume that the officer who initiated the arrest did so lawfully. The legality of the arrest depends on the knowledge of the officer who decided to make the arrest, not that of the officer who carried out the order: *R. v. Debot* (1989), 52 C.C.C. (3d) 193 (S.C.C.); *R. v. Dawson* [1998] O.J. No. 5220 (Ont. Gen. Div.); *R. v. Venzi* [1997] B.C.J. No. 3019 (S.C.). Cst. Hodder was not in any way involved in the decision that led to Ms. Muttray's arrest. His conduct in effecting that arrest was appropriate to the circumstances.

22.6. Doucette Arrest was Not Appropriate

S/Sgt. Stewart decided to arrest Mr. Doucette on the basis of

- the information he had about the use of the walkie-talkies;
- Mr. Doucette's actions in speaking into his jacket;
- the movement of the crowd back and forth onto the road which was preventing the RCMP from keeping the road open and causing them difficulty; and
- the fact that Mr. Doucette fled from S/Sgt. Stewart.

The combination of these factors led S/Sgt. Stewart to conclude that the crowd was being controlled by Mr. Doucette, via walkie-talkie, and that he was orchestrating their movements.

I accept that the protesters were struggling to gain access to and block the roadway, with varying degrees of success, and that the police were acting in the lawful execution of their duty in trying to keep the road open. I accept that S/Sgt. Stewart honestly and sincerely believed that Mr. Doucette was playing a role in controlling the crowd and directing protesters to breach the police line. However, the grounds for his belief were not objectively reasonable. The following exchange was particularly telling:

> Q: And what information did you imagine that he could possibly be giving them that would in any way help them in their civil disobedience?
>
> A: Well, I believed that he was talking to someone who was causing them to move out in the road in groups.
>
> And as the Police moved down, because we didn't have all of our resources there. As they moved down to deal with one group, with the number of Police we had, we then weakened the Police line on the left, and then they would move out onto the road.
>
> Then we would take the police line, shift it back now, to deal with the group on the road, and the group on the right would move out.
>
> We didn't have enough Police Officers to keep it open. We did not have so many, that we could cover the whole length of the people.
>
> And that's what was happening as we moved to deal within one group and the line thinned out, then the other portion of the line would push out.
>
> And I believed that he was doing that.

This was clearly not an answer to the question put to S/Sgt. Stewart. In fact, his response makes it clear that the reason the RCMP were having difficulty keeping the road open was that, to S/Sgt. Stewart's knowledge, there were simply not enough police at that location at that time to deal with the protesters. The fact that they were taking advantage of the RCMP's overly stretched ranks did not provide a reasonable basis for S/Sgt. Stewart's conclusion that Mr. Doucette was controlling the crowd. A reasonable person in

S/Sgt. Stewart's position would not have concluded, from seeing Mr. Doucette speaking into his jacket (without hearing what he was saying), from the movements of the crowd, and from Mr. Doucette's flight from the approaching officer, that Mr. Doucette was committing the criminal offence of obstructing police officers in the execution of their duty. He was not, to the knowledge of S/Sgt. Stewart, using a megaphone to exhort the crowd to break the law, and although he may well have appeared to be engaged in some sort of clandestine activity, it was simply not reasonable to conclude that, by his actions, he was somehow orchestrating the actions of a crowd of more than 100 people. I conclude that S/Sgt. Stewart lacked reasonable grounds to direct the arrest of Mr. Doucette and that his conduct in directing the arrest was not "appropriate to the circumstances."

22.7. Miscellaneous Allegations

I find no substance to the allegations of lack of care and attention to Ms. Muttray's backpack and bicycle nor to the suggestion that the RCMP failed to properly investigate her complaint about the location of her bicycle. All of Ms. Muttray's property was returned to her. The RCMP conduct was not inappropriate. With respect to Mr. Doucette's bicycle, which was never recovered, counsel to S/Sgt. Stewart took a very reasonable position, with which I agree, when he said: "I would not quarrel with the proposition that the loss ought not to be borne by him."

Lastly, it was suggested in one of the complaints that S/Sgt. Plante was involved in the arrests of Ms. Muttray and Mr. Doucette but I find that that was not the case.

23. COMPLAINT CATEGORY 11: CONFRONTATION AT THE NOON RALLY

There were complaints that the RCMP used excessive force, including pepper spray, on the crowd after a security fence came down, that they used it punitively and without warning, and that some who were seeking to be arrested peacefully were pepper sprayed and assaulted by police.

23.1. The Protesters' Plan

Earlier in this report I referred to the march by 2,500 to 3,000 people to the security fence near the flagpole and to what they intended when they got there. They expected to meet a line of police officers protecting the integrity of the fence. As an act of civil disobedience, they intended to lean against or bump into the officers at the front of that line. This, they hoped and expected, would result in many of them being arrested. The leading organizer of the march, Jonathan Oppenheim, explained:

> A: . . . it was a civil disobedience action and that people were going to go--I would use confront APEC, people were going to go and basically lightly bump against police.
>
> Q: I'm gonna suggest, sir, that that's a confrontation intended to bring about their arrest?
>
> A: I wouldn't consider it a confrontation. I would consider it a civil disobedience action which we anticipated would probably result in arrest.

Garth Mullins, who performed duties during and immediately following the march as a "peacekeeper," gave his explanation:

> And you're showing through a symbolic action, through your arrest, through your willingness to give up your personal--your personal time to be incarcerated. That you're willing to go to show what you're trying to do. This--this is the essence of civil disobedience. This is the symbolic value of offering yourself forward for arrest and incarceration of your profound conviction that the law and the policy is wrong. This is a time-honoured practice that's been around for hundreds of years, and social rights have been won through the use of this in our own country and many others.

Mr. Oppenheim explained that a peacekeeper was there to be "very neutral." Mr. Mullins, who volunteered his services as a peacekeeper, said in that role he was like a marshal, fulfilling a crowd control function and working with other peacekeepers as a team to help the demonstration achieve its goals. He explained:

> If a demonstration wants to go from one point in the city to another, peacekeepers help make sure that the people in the demonstration go there, you know, take the correct streets. If a demonstration has a certain amount of goals, such as the demonstration is non-violent, and it appears that one person is being extremely aggressive, then the peacekeeper's job will be to calm that person down and to suggest to them that their actions are outside of the mandate of the demonstration.

23.2. Confusion at the Fence

Mr. Oppenheim acknowledged that, when the police unexpectedly abandoned the security line in front of the fence, the protesters did not know what to do: they were confused and surprised. One protester, Elise Thorburn, said protesters were shocked to find themselves so close to the fence. Ms. Bonfonti said the movement of the police away from the fence caused confusion for the marchers. She said she was in a "kind of shock for a moment just because I did not know why they would turn and leave." She was asked what happened next:

> A: Then we stood there for a minute because we were, like the people that I was linked arms with, we were kind of, sort of looking at each other like, well, what are we gonna do now because the whole idea was that there was gonna be a line of Police and we'd lean into them but now they're not there. So, just kind of, I mean there wasn't a large meeting or anything but by talking to the people on either side we said, well, we're standing in front of the fence, so let's--I bet if we start to climb on the fence that they'll come back and arrest us then.
>
> Q: Okay.
>
> A: So, that's what we did.
>
> Q: So that was decided upon and--and you in fact did exactly that; is that correct?
>
> A: Yes. I myself didn't get very much onto the fence, I reached up with two hands but then it--that's when it fell.

23.3. The Fence Comes Down

Before Ms. Bonfonti reached the fence others had climbed onto its cement base. Cst. Kevin Bracewell was a Quick Response Team leader whose team was stationed to the left of the fence. Twice he directed his team to "move in" and ask those on the cement bases to get down. He said the first group were mostly media persons with cameras and lenses and the second group were what he described as "members of the crowd". Both times the climbers complied with the police request. Cst. Bracewell was asked what happened next:

A:	Again, more individuals climbed onto the fence line. At this point, I again, gave direction from my team to deploy and as we were deploying, the fence was then pulled down on top of my team and myself.
Q:	All right. So you were actually standing under the arc of the fence as it came down?
A:	Yes.
Q:	All right. What happened then?
A:	We responded by using the OC spray as the fence was coming down, and members were trapped underneath, and members of the press were also under there, to clear back the people that were pulling the fence down and to stabilize the fence line again.
Q:	All right. And can you tell us a little more detail about that? You made a decision, obviously, to use OC spray. Why, and against whom?
A:	It was directed against the people that were identified as physically clinging onto the fence which was being pulled down on top of my team and members. That was people actually pulling and jerking onto the fence. The spray was deployed. The fence was released, and then we moved forward to--to then disperse the crowd just further back from the collapsed fence. Once we'd extricated ourselves from the fence, myself and my team didn't then use any more of the OC spray. Once we'd extricated ourselves from the fence, and the fence where it had sort of sprung back off myself and my team, we then moved forward extending our line, and verbally and physically pushing people back away from the fence line to a line approximately 15 metres from the fence line where we stopped, and then were reinforced by the bike squad units, which had been holding in reserve on the flanks.
Q:	During the course of those actions, was any violence directed from the crowd to you, or to any of your members?
A:	I can only specifically speak for myself, violence was directed towards me.
Q:	And can you describe that?
A:	Somebody from the crowd threw what I would suppose to be one of the placard pieces of wood, it was a length of wood, and it was thrown at me, and it struck me on my left wrist.

23.4. Police Response

All of the Quick Response Teams that had been lined up to the left and right of the open fence and at right angles to it moved back in front of the fence to assist as described by

Cst. Bracewell. A solid police line was then formed with the VPD Bike Unit members, all with their bikes, in the first line and the RCMP members of the Quick Response Teams behind them, all facing the protesters.

Ms. Bonfonti, who said she had no intention of either pulling down or going over the fence, was among those trapped under it. She said she was hunched down on the ground, with her face covered to avoid being pepper sprayed, when she was grabbed from behind her back by a police officer, carried and dragged away, and then placed under arrest along with two other protesters.

Several officers explained the tension and near crisis of the moment when the fence collapsed. Mr. Mullins perhaps best described the scene as one of chaos, with the protesters' plans being quickly abandoned, and the protesters "just trying to preserve themselves."

Sgt. McLaren, second in command of the Quick Response Teams, was caught under the fence when it came down. He was concerned that he would be trampled in all the confusion. He had a physical confrontation with one protester who would not release his hands from the fence. RCMP officers Cst. Sean Powell and Cpl. Dale Carr deployed pepper spray on this occasion. They each gave their reasons for doing so. Cst. Powell was asked whether he had been instructed or ordered to use the pepper spray:

> No, not on that particular occasion. The--the use of pepper spray is trained to us in the RCMP Training Academy and we are each taught to use our judgment when we think it is proper and just to use the pepper spray, and at that time I believed that that secures--that breach of the fence where the fence had been ripped down was serious enough and there was enough people coming over the top of that fence at that point jeopardizing the safety of the other officers in the area that at that time I decided it was in the interest to use my pepper spray.

Cpl. Carr was asked why he felt it was necessary to use pepper spray:

> I was afraid for my--my safety, my life, in fact, It was--probably one of the scariest times of my career. And to start pushing people back--this is, in my opinion, and the way we were trained, it's a non--it's a less violent way to have people move back, or

> to--to control people. I'd rather use the pepper spray than start wrestling with people, wrestling with a large crowd like that or using well, a higher means of force.

I agree with the summation of these events set forth in the closing written submission of Counsel for S/Sgt. Stewart and Sgt. McLaren:

> In fact, as matters unfolded, the situation turned out very badly. The protestors approached, drumming and chanting "the students are here to keep the peace; watch the actions of police!" They approached the fence and some of their number climbed onto the fence, despite the direction by QRT members to stay off. The situation was complicated because a significant number of media and particularly television personnel were in or near the front ranks of the protestors. Because the fence turned out to be inadequately fastened to its uprights, it collapsed. In the result, individuals, both police and civilian, were trapped under the fence. Pandemonium and confusion reigned. In the circumstances, it was imperative that the police move the crowd back immediately from the fence line. . . . The police response was to close in to the gap from either side and to move the protestors back in order to be able to restore the fence to its upright position. This was accomplished by means of loud verbal direction, pushing and the intermittent use of OC spray.

Counsel for the B.C. Civil Liberties Association said, in closing written submissions:

> Faced with a crowd which greatly outnumbered them, with no barrier but their own bodies between the crowd and the Museum of Anthropology, the police at the fence had to react very quickly and under extremely stressful conditions. We would not criticize their initial use of pepper spray under those circumstances.

Complainants' counsel adopted the argument of counsel for the Association on this point. I agree with both counsel. The police officers faced a serious and difficult situation. The 18 world leaders were engaged in their conference at the Museum of Anthropology, behind the fence line. The RCMP held responsibility for their safety. The intentions of the protesters, once they had pulled down the fence, were unknown. It is reasonable to conclude that at least some of them were, at that point, intent on making their way to the museum site. Counsel for S/Sgt. Stewart and Sgt. McLaren said, during closing argument:

> But the real issue is what was the intention as known by the police at the germane moment, the germane moment being approximately 12:00 noon. And in my submission, it certainly hadn't been stated or indicated to them in any explicit way and, so, it left them in the position of having to draw reasonable inferences from what they saw.

I agree with that proposition. In my judgment, the conduct of all members of the RCMP engaged in the events just reviewed was appropriate to the circumstances.

23.5. Protesters Advance Again

Tension was extreme immediately after the events I have described. Nobody knew what was going to happen. There was concern and anxiety on the part of both police and protesters. It was noisy and demonstrators were angry. Organizers and peacekeepers played a significant role in calming the demonstrators. They were successful in having the majority sit on the ground, leaving an open area of approximately 20 feet between protesters and the police line. Megaphones were used to address the crowd.

Within 10 or 15 minutes a decision was made to approach the police line. Mr. Mullins said the decision was for small groups of protesters to go forward "trying to re-establish the initial plan." That meant leaning or bumping into the police line and then being arrested. Ms. Thorburn said the decision was arrived at through what she described as a "democratic conversation." She said that people got up and gave suggestions that were discussed and then it was decided that "we would go forward in groups of four to be peacefully arrested." Those groups were formed and Ms. Thorburn was in the first group to advance. They did not first try to communicate directly with the police officers. Mr. Oppenheim was asked whether he had inquired of the police as to who was in charge and whether he could talk to that person:

> No, 'cause we felt that they understood what we were trying to do. It didn't appear there was any doubt and there was certainly no doubt in my mind, and I don't think any doubt in anyone's mind, that the Police understood exactly what we were trying to do and how we were trying to do it.

Mr. Oppenheim said the police knew of these plans because they had attended public meetings and forums where the protesters' plans were openly discussed and because they were well able to hear the plans being formulated at the site as the protesters sat on the ground and discussed their next move. Mr. Oppenheim explained what occurred once the decision was made to "try the C.D. again in the same way:"

> A: I remember asking, with the megaphone, saying that we can try the civil disobedience action again, but everyone has to be really, really quiet when we do it. And people should move very, very slowly when they do it.
>
> Q: Okay. At this point, you're using the megaphone?
>
> A: Yes, and the Police are all around me, so I'm sure that--I mean I'm--you know, my understanding is they can hear me, so it's basically--I mean, I was basically megaphoning this information to the crowd, and to the Police at the same time.
>
> Q: All right. So tell us again, carry on with what you were saying in the megaphone at that time.
>
> A: And I said--the situation is very volatile--I remember saying the situation is very volatile, so please move very, very carefully, and very calmly, and then just described it, you know, described what we would do, and then--
>
> Q: What did you describe?
>
> A: I just said that a group of five people are going to approach the line very slowly and just lightly push against the Police.
>
> Q: And you said that into the megaphone?
>
> A: I believe--yeah.
>
> Q: To the crowd?
>
> A: To the crowd and the Police, because they were all kind of around us.

In my judgment, sending the four protesters forward in the existing environment without direct discussion with the police officers was extremely irresponsible, for which Mr. Oppenheim, in his leadership role, must bear major responsibility. The events of the previous minutes had significantly changed the circumstances that had been discussed at public meetings and forums. The volatile situation described by Mr. Oppenheim made it impossible for the police to know and understand what to expect. His communication via the megaphone was ineffectual and was no substitute for a face to face discussion. The result was another disaster.

Ms. Thorburn who, as I have indicated, was one of the four to go forward at this time, discussed what occurred:

Q: Which group were you in?

A: The first group.

Q: How did you come about being part of that group?

A: Because I was just way too gung ho. (sic) I don't know, I just ran up there. I was right in the front when we were sitting, I was right in the front row, and I don't know, I was just really excited or something--really silly, and I just linked arms with somebody.

Q: Did you know the people that you were linking arms with?

A: No.

Q: What did you understand you were going to do before you did it?

A: Proceed forward to be peacefully arrested.

Q: And were you to say anything to the Police?

A: No.

Q: Okay. So describe now for us the line that was formed and how you approached the Police and what you did?

A: Well, first of all, when we began the protest, we were all given little pamphlets about civil disobedience and how to behave, and we were told about non-violence and no drugs or weapons or anything like that. So when we went forward we walked very slowly, and we just moved quietly and slowly towards the Police line, four people linking arms, and then...

Q: Did you say anything to the Police when you approached them?

A: No.

Q: All right. What did you do physically as you approached?

A: Just stood my ground, basically. I was linked arms with somebody else, I was pushed backwards and like, punched in the face a couple of times in the forehead by the--one of the Police Officers, and because I was linked arms with somebody else, I sort of went backwards and sprung forwards again, and...

Q: Were any of your companions with whom you were linked in arms saying anything to the Police?

A: Not that I remember, but they could have been, I don't remember.

Q: Okay. So just describe what happened to you?

A: We approached the Police line and there was a lot of shoving at us with the bicycles, and a lot of screaming, and I guess the chaotic atmosphere was really-it was, like, played upon by the RCMP and--or the Police Officers, and they started screaming all at once, and all these different people yelling about--that to back off, and they were going to spray, and this and that. And, I don't know, it was difficult to understand, and then all of a sudden I realized that they were probably going to spray something, so I

> raised my right arm above my face--and sorry, and I was pushed in the shoulder backwards, and then I was like, punched in the forehead, so that my face was exposed, and my arm was pulled down. And then I was sprayed all over my face, and then my side and back were sprayed. And as I leaned forward, like, kind of huddled over, my backpack was grabbed from behind and I was just pulled over the row of bikes.

Ms. Thorburn was then arrested. In cross examination she said that although she was shoved quite aggressively, she was not punched.

Cst. John Snow described the same scene from the perspective of a police officer who had participated in the clash:

> Q: All right, and what happened then?
>
> A: From there--I don't recall exactly if the individual's act--once we formed the line, whether they backed off and regrouped. I know there was some regrouping going on. But I know that, you know, we were still dealing with the protestors and trying to keep them off the line. I don't know exactly when during the course of that, but I remember, you know, protestors and media all coming and protestors coming and actually pushing up against us again. Grabbing onto us. There was an incident where there was a water bottle at one time through the line that was from the crowd that was--that was thrown towards us. Either a stick or another light object that was thrown over our heads. And there was another incident as well, where--and I believe it to be a female, but I can't say for sure, either had an aerosol or some sort of container which she actually sprayed a substance, whether it be water or a foreign agent, I don't know, in our direction as well. The protestors continued to come towards us and --and--and banging up against us. At one time, one of the protestors in--in the--in a group, had his hands or hand or hands over his--his face in a--in a fist like gesture, and would kinda actually take runs of--with our line and--and people behind him and actually run at the line. Trying to--to breach the line and actually making contact with myself and obviously the--the female member that was closer to, you know, to the crowd. And actually I had to push him back numerous times. I'd been hit by him on a couple of occasions and I believe at one time was actually hit in the face with his hand. From there I--he--after the couple of times coming towards me, I believe I did spray him with pepper spray, gave him a one or two burst spray. That didn't deter him, he continued, to come at me, where I--I recall grabbing onto his hands and actually pulling him over the--the bike line. And at that time as I was pulling this individual on, there was a--other people behind him, there was actually a female that was either hooked onto him or grabbing onto his belt, I'm not sure how. But she came right over the line as well, with him. And when--when something like that arrest happens, the individual is dealt with behind and we basically form back up and--and try to, you know, maintain the line.
>
> Q: All right, so once you'd pulled him and the--and the girl through the line, they were taken care of behind--
>
> A: They were--

Q: --you?

A: --they were dealt with, with an arrest team behind, yes.

The female mentioned by Cst. Snow was Ms. Thorburn. The male was Aiyannis Ormond, who was neither a complainant nor a witness at the hearing. Cst. Snow said that he concluded that the pepper spray was not a deterrent to Mr. Ormond so on "[h]is last run at me, I decided to use the force of his weight and the people who were pushing him to actually drag him over the line."

There is no question but that the police dealt aggressively with the four people with whom they were engaged in this face-to-face confrontation. That aggressiveness began when the four arrived at the police line. The police did not know what was going to happen. Recent events were clearly in their minds. They were vocal in directing the protesters to back off. Everyone knew by then of the tenuous nature of the fence, even though it had undergone some quick and temporary repairs. I do not fault the police for the aggressive stance they took under the circumstances. Unquestionably, the amount of pepper spray released was considerable. There were many protestors behind the first group of four with arms linked ready to come forward to the police line. It was tense and it was scary. I agree with Commission Counsel that, in the spectrum of force options, the police "followed through with verbal commands, soft hand techniques, pushing, then they used OC (pepper spray) and, when that didn't work they arrested." As unfortunate as the results were, particularly for the four who went forward to the police line at that stage, in my judgment the police conduct was appropriate to the circumstances.

One of those four was a male who suffered severe respiratory distress as a result of the pepper spray. He was one of the two people in the line who were not arrested. He was neither a complainant nor a witness at the hearing. Fellow demonstrators, police and qualified paramedics attended to his needs. Police offered all possible assistance, particularly through the efforts of Cst. Fulks who had special first aid training and experience in this field. Decontamination procedures were begun and were continued after the person had been removed from the crowded area. By the time ambulance personnel arrived, his condition had greatly improved. He was nevertheless taken to hospital for examination as a precautionary step. I am satisfied that the police acted properly in dealing with this individual. I am also satisfied that proper and acceptable decontamination procedures were followed by the police on site as they attempted to bring relief to Ms. Thorburn and Mr. Ormond, both of whom had received considerable pepper spray.

23.6. Negotiated Arrests

Not long after the Thorburn/Ormond incident, Mr. Oppenheim spoke with Sgt. Rob Rothwell of the VPD. Sgt. Rothwell was in the front line of the VPD Bike Unit and had been in the centre of the event that had just concluded. Mr. Oppenheim said Sgt. Rothwell told him that the police did not understand what the demonstrators were trying to do. Sgt. Rothwell asked Mr. Oppenheim if he would get a delegation together so the two sides could talk and try to break the impasse. Mr. Oppenheim acknowledged that he responded by saying that the protesters were organized and Sgt. Rothwell should organize his own delegation. Mr. Oppenheim then left. For Mr. Oppenheim to have rebuffed what I believe to have been a sincere conciliatory initiative by the police at this time of near crisis was another act of irresponsibility on his part. He said he left because he was upset. Fortunately, the matter did not end there. Rodney DeCrew, a peacekeeper like Mr. Mullins, became involved in the discussions. The ultimate result was an agreement to allow for a series of negotiated arrests.

The negotiated arrests involved a procedure whereby groups of four or five protesters would approach the police line and, without any altercation, pass through the line and be taken into custody. Sgt. Kenneth Frail of the VPD and a member of the bicycle squad attached to the Quick Response Teams played an active role in this arrangement. He explained the basis for the agreement:

> . . . the reason for the arrest was because I anticipated a breach of the peace would reoccur amongst the same 30 or 40 people that I was convinced that this was the same parties that had pushed against us, that would likely tear the fence down. So this wasn't a voluntary arrest, if you like, on my part. This was a breach of the peace arrest where a charge wouldn't be laid, where we could hold a person until such time as we could release them.

Sgt. Frail acknowledged that he saw this as a way to defuse an undesirable and very tense situation. He continued:

> The arrests were to prevent a re-occurrence at that point. We were also very mindful that, if the crowd got through the fence, that we would have to escalate to other levels of use of force. We had 300 crowd control members on the other side of the fence, you know I can't even begin to imagine what kind of altercation we would have been faced with, if semi-peaceful protestors, if you like, were led through the fence by more aggressive people, and were confronted with a Crowd Control Unit. The levels of force would have escalated and I felt, we had a duty, as Peace Officers, to prevent that from occurring. And that's why those arrests occurred.

Under the circumstances, and with a limit on the number of arrests that could be accommodated, it is my belief that the negotiated arrest procedure was a very sensible course to follow. The arrest component of the civil disobedience then in progress was, for reasons already explained, very important to the protesters. S/Sgt. Stewart, who was directing the actions of the Quick Response Teams, decided that after four rows of four protesters each had gone through the negotiated arrest process, it should stop. All had gone as expected, although one of those arrested said she was jostled by the officers in the process. That was not a significant occurrence. S/Sgt. Stewart gave his reasons for bringing the process to a halt:

> We were--we--we agreed to--to carry out the arrests, but it became obvious to me by the number of persons that were volunteering to be arrested that we were simply weighing down the police and going to make it almost impossible to deal with--with anything else that occurred. I then determined that, as these were essentially supposed to be symbolic arrests to state a point, and as a means of protest, that, in discussion with John Oppenheim, that we had reached that goal in my mind, and that I was not prepared to accept anymore individuals to be voluntarily arrested. That caused a great deal of--of--it was obvious to me that there was a great deal of consternation caused by those remarks.

Mr. Oppenheim went to talk to Sgt. Rothwell about the decision that had been made and communicated his position:

> I was basically arguing with him for quite some time that--you know, why are you doing this, there's no reason why you can't arrest people. It's the best--you know--all these people are going to be participating in civil disobedience and the safest course of action is just to arrest them peacefully and do it in this manner, because, you know, you don't want to bring up the tension, why don't you just keep doing this.

In my view, Mr. Oppenheim completely overlooked the fact that the police force's principal task on campus that day was to protect the safety of the visiting world leaders. To have met the wishes of Mr. Oppenheim and his associates would have created obvious risks to the safety of those visitors by disrupting the police resources available for security duties. Given the number of protesters standing ready to be arrested, the demands on personnel and physical resources such as vehicles and jail cells would have been enormous at a time when the police needed to commit their full attention to their security assignment. In my judgment, the police acted very reasonably in accommodating the wishes of the demonstrators for a negotiated arrest process and they acted equally reasonably in calling it to a halt.

23.7. More Civil Disobedience

Mr. Mullins said that he and his associates had to figure out the next step in the process. He said approximately 120 people were lined up in 10 rows of 10 or 12 each, facing the police line, all of whom wanted to be arrested. Mr. Oppenheim said that, after discussions, the decision was to "try the civil disobedience action again." Accordingly, the line of demonstrators immediately in front of the police line began bumping into the officers, "rocking a bit back and forth against the police line and just pushing slightly, but not very hard", according to Mr. Oppenheim.

S/Sgt. Stewart described this as "a very uncomfortable experience." I am sure that it was exactly that from the perspective of the police officers, particularly those in the front line. S/Sgt. Stewart explained the situation as it then existed:

> What happened from there was a bit of a face-to-face standoff, with the police on one side, the group of determined protestors, in this block of people and then

> hundreds and hundreds of other persons sitting, singing, chanting, from behind what appeared to be an internal security line within the crowd, back down the mall.

S/Sgt. Stewart said he believed that it was only a matter of time until an attempt would be made to push through the police line. Considering what had occurred and what his resources were then facing, he concluded, quite reasonably I believe, that the crowd was then dangerous and that the police were at risk. Had the matter escalated and the tactical troops from Vancouver and Ottawa been brought out, I am satisfied that the police would have been able to keep control but it would not have been a pleasant experience.

The standoff continued for more than an hour with rows of protesters standing before the police. Those in front were inches from the police line. The police believed that if the protesters moved forward together they would knock through the police line. S/Sgt. Stewart said:

> . . . . This struck me as a group of people - a human block of 15,000 plus pounds that was going to push through the police line to the fence. And I was very, very nervous. The members were very, very nervous. There was a lot of conversation going on. To my understanding at that point in time, the Crowd Control - or the Tactical Troup had been advised to stand by in Level 2.

However, rather than that mass of people moving forward, they ultimately decided to leave for Gate 3, the planned exit route for the leaders. Mr. Oppenheim said they chose that location because they anticipated that if protesters sat on the road, they would be arrested.

In summary, I conclude that the police conduct reviewed in this chapter and which was the subject of complaints was appropriate to the circumstances.

24. COMPLAINT CATEGORY 12: OPPENHEIM ARREST

Jonathan Oppenheim was arrested on the afternoon of November 25 at Gate 3 when he was suspected of playing a role in the collapse of the security fence near the School of Theology. The complaint is that Mr. Oppenheim was wrongfully arrested and that excessive force was used in his arrest.

24.1. Issues

The primary issue is whether Cpl. Charles J. McDonald, the officer who directed Mr. Oppenheim's arrest, had reasonable grounds to believe that Mr. Oppenheim had committed mischief to the security fence. The secondary issue is whether the police used excessive force in effecting the arrest.

24.2. What Happened at the Fence

This incident occurred between the two buildings on Iona Drive. Those protesters who made the move from the flagpole area to the Gate 3 location of the initial road blockade passed along the outside and to the south of the security fence, close to where the fence came to an end.

Cpl. McDonald was the Assistant Team Leader of Quick Response Team 5. This team had been assigned duties near the School of Theology throughout the day. Cpl. McDonald had become aware of Mr. Oppenheim's name during APEC week by reading the Threat Assessment Group reports at morning briefing sessions. He had also seen Mr. Oppenheim's picture at the RCMP's UBC Detachment office.

At about 2:30 p.m. on November 25, Cpl. McDonald was stationed inside the security fence on Iona Drive. He described the environment:

> . . . . And we were in high alert, because the motorcades were attempting to leave and we knew that everyone that was at pol – at the flagpoles protesting, was now going to occupy or try to occupy the motorcades routes, and prevent the motorcades from getting out. And I knew how many people were there, how many protesters were there.

Considering what had transpired over the previous few hours and the RCMP's responsibility to see to the safe departure of the world leaders over the next two hours or so, I am sure it was indeed a time of "high alert" for Cpl. McDonald and his colleagues.

Cpl. McDonald was paired with Cst. Deri Kinsey as they patrolled the fence near the Theology Centre in the area where the breach took place. Cpl. McDonald's evidence was that scores of people were walking by, quite quietly, considering the commotion he had heard earlier coming from the flagpole area. Cpl. McDonald said he was concerned about the weakness of the security fence.

He said that Mr. Oppenheim stepped out of the crowd of people, walked up to the fence, looked at it, then grabbed it and began ripping it. As a result, the white plastic straps that connected the chain link fencing to the upright fence posts began to pop off. He said that after two or three straps popped off, Mr. Oppenheim began pushing on the fence as hard as he could. As a result, the crowd stopped and, after a few seconds, three more people ran to the fence, jumped on it and joined in pushing it, causing 30 feet of the chain link fence to fall to the ground.

Cpl. McDonald reached for his pepper spray canister and, as he moved towards the four individuals at the fence, Mr. Oppenheim ran away in what Cpl. McDonald believed to be a northerly direction between the law school and the chapel. Two others also ran and the fourth was pepper sprayed by Cpl. McDonald.

Cpl. McDonald said he jumped over the barrier and began to chase the men but had to abandon the chase because the crowd closed in on him. He immediately got on his radio, notified dispatch of what had occurred and identified Mr. Oppenheim as "the person responsible for initiating this whole incident." Cpl. McDonald said that he considered Mr. Oppenheim arrestable immediately and therefore broadcast his description.

Cpl. McDonald described the effect that pushing on the fence would have on the plastic straps as follows:

> The fence is attached with straps and any pressure applied on the fence, on either side, in either direction, would cause stress on the straps.

Mr. Oppenheim asked Cpl. McDonald to explain why, given that the fence was attached to the other side of the pole, anyone would pull on the fence as Cpl. McDonald said Mr. Oppenheim had done and also why doing so would cause the straps to come off. Cpl. McDonald told him:

> The straps came off because you were pulling so hard. And where you were pulling was in the middle of the chain link. So even if the fence is fastened on the other side of the posts, it would still cause enough stress on them, if you were pulling hard enough, to pop the straps off.

Mr. Oppenheim asked Cpl. McDonald why, after the incident, he had not sought out witnesses to the incident or called in an investigation unit:

> Q: And I'm going to suggest that the reason you did that was you basically wanted no fuss, no muss in court, just your word against my word. And you knew that judges are almost always going to believe a police officer over some hippy; right?
>
> A: What happened was a very straightforward case of mischief, and the *Criminal Code* section describing mischief in layman's terms means vandalism. You committed vandalism against the fence with three other people. It was a minor incident, but it was a criminal offence nonetheless. I couldn't arrest you, so I broadcast it to other people. I didn't expect that there were going to be witnesses who would be co-operative. At that point, by the time I came across the fence with pepper spray in my hand, having just pepper sprayed somebody else, there wasn't one person in there who was saying, pick me. I'm a witness. There were screaming at me about police brutality. And I hardly expect any--and if I needed other witnesses, there were members in the area, even members in the area didn't see what happened. At the time, the--they--of paramount importance was protecting the perimeter of the security area, not conducting a thorough investigation and an exhaustive investigation into a minor incident of mischief.

Acting Sgt. Rainey of the VPD heard Cpl. McDonald's broadcast and was asked about his involvement in Mr. Oppenheim's arrest:

> The only participation I had in that, I overheard what I believe an RCMP member advise on the radio that Oppenheim was arrestable for mischief. I turned to an RCMP member who was present and then I said 'did you hear that over the radio?' And I

> advised him what I had heard. And that's the extent of my dealing with the arrest of Oppenheim.

Acting Sgt. Rainey said there was no mention of a warrant during the broadcast and then added: "I don't remember anything about a warrant, it was just, he was arrestable for mischief."

In his examination in chief, Cst. Kinsey outlined the events as he saw them. In cross examination, those events were reviewed with him:

> Q: Okay. And the first person that you saw go up to the fence, the person you now say was Jonathan Oppenheim, you say that he shook the fence and the plastic ties tore away, right?
>
> A: That's correct.
>
> Q: And is it fair to say that they tore away immediately?
>
> A: They started to tear away. As soon as they started to tear away--and I would assume that individuals in the crowd saw that it was starting to tear away, and jumped up to assist him.
>
> Q: So it--the sequence was Jonathan Oppenheim, you say, was the first person who shook the fence. The plastic ties teared (sic) away immediately, some of them, right; not all of them?
>
> A: Some of them, yes.
>
> Q: And then after that, two or three or four --I'm not sure how many numbers--went to the fence, and it was a result of their conduct that the fence came down; right?
>
> A: As a result of the combined conduct of all the individuals that were up on the fence, they finished the job off, yes.
>
> Q: But you can't say that--that--what I hear you saying is that Jonathan Oppenheim shook the fence first, a couple of plastic ties broke away. Then two or three or four other individuals came up, shook the fence, all the plastic ties came away, and the fence was down. Is that a fair--fair description?
>
> A: That's correct, yes.

Mr. Oppenheim acknowledged that, during his walk from the flagpole to Chancellor Boulevard in the vicinity of Gate 3, he had taken off "one or two more" plastic ties from the fence. He described the area where this occurred as near the Theology Centre and near the chapel area. He said he "flicked" the ties off by a wrist movement as they were cold and brittle. With reference to the fence and the ties, he said "I may have just kind of pushed slightly at it but they came off very, very easily." I am satisfied that this was the incident described by Cpl. McDonald and Cst. Kinsey. Mr. Oppenheim's reference to having taken off "more" ties at this location distinguished an earlier incident when he took one or two ties off the fence in the flagpole area, at or about the time he was leaving that area. He was asked why he had taken off the ties in the vicinity of the flagpole:

> I remember talking--like it was in some--in front of some police officers and I was basically saying--you know--you have a 20 million dollar or a 50 million dollar security operation and I guess you spent all your money on pepper spray instead of proper fencing or something like that.

Mr. Oppenheim said when he left the fence after removing the ties at the Theology Centre location, the fence was still intact. Suddenly he heard "general chaos" and he "whipped around and basically saw the tail-end of what appeared to be someone probably ripping down the fence or something like that." I am satisfied that what Mr. Oppenheim said he observed was the collapse of the fence where, seconds before, he had removed the ties. Mr. Oppenheim said he yelled into his megaphone to those in the area to "get away from the fence." That evidence of Mr. Oppenheim, with respect to his actions at the fence, is consistent with Cst. Kinsey's observations.

24.3. Eyewitnesses

Protesters Michael Linder, Mathieu Mauser and Rob West, who were in the vicinity when the fence collapsed, also testified. Mr. Linder explained what he had seen:

> Q: Could you please describe for us, what you saw while you were on the route, between the flagpole and Chancellor Boulevard?
>
> A: On the way there, there were several people, lots of people going in that direction towards Gate 3. . . .There were a few people who had pushed in twist ties along the way just with one hand, just giving a little push and it just popped in. And this one area, where the incident occurred, that I have on my videotape, there was one gentleman who took it a little further than everyone else and pushed it in and the fence fell. He ran in, along this grassy place to the left and ran a few circles and got chased out by a police officer.

He said that the person who ran inside the secure area and was chased out was not Mr. Oppenheim. His testimony continued:

Q: What did you see after that?

A: I saw other people--well when the Police Officer came out of the secured area after he had chased the guy out--he obviously took off--the Police Officer then, he had his pepper spray in hand, as you can see in my video, and what we don't have is him actually spraying it. But, he was spraying it, trying to grab someone near him and he--he eventually got this one guy that we have on the video, who he told to stop and he got him and grabbed him by the arm and--

Q: And what did you do?

A: I was--I went--I walked up to the Police Officer and told him that that was not the guy that pushed in the fence and that--to leave him alone--leave him alone--this was not the guy who pushed in the fence. And there were several other people yelling as well.

Q: And did the Police Officer respond?

A: No, he completely ignored me.

Mr. Linder said he was certain that Mr. Oppenheim was not one of the people he had seen pushing the twist ties on the fence as they walked along. I have concluded that either Mr. Linder had not reached that part of the fence at the time, or his attention at that moment was directed elsewhere.

Mr. Linder identified the man apprehended by the police officer, in a photograph shown to him at the hearing, as "the one in the grey hat" standing beside Cpl. McDonald.

Mr. Linder was correct when he told Cpl. McDonald that the man he had hold of was not the one who had pushed in the fence. Cpl. McDonald identified that man as Aaron Sean Bradfield. He had arrested Mr. Bradfield shortly after returning from chasing those who had been involved in the collapse of the fence. He said that Mr. Bradfield had come up to him while he was talking to some of the peacekeepers and Cpl. McDonald told Mr. Bradfield to just keep moving towards the gate. Mr. Bradfield refused and the officer repeated his instructions. When Mr. Bradfield did not move, Cpl. McDonald placed him under arrest.

Mr. Mauser saw the attack on the fence. He said he remembered "some guy grabbing the fence," but his description of the clothing worn by that individual did not correspond to the clothing worn that day by either Mr. Oppenheim or Mr. Bradfield. He said that he knew Mr. Oppenheim and that he was not the person he saw tearing down the fence. He said he did not remember seeing Mr. Oppenheim on the walk but he believed he was at the blockade later with a megaphone. He said he thought the person who grabbed and tore down part of the fence had tried to run away and he did not know whether he had been arrested.

Mr. West identified the man in the grey toque as the man who had been shaking the fence prior to its collapse. He was mistaken. He said he had seen him going to the fence "through his own volition," grabbing it and shaking it two or three times immediately "before it collapsed inward." He was correct in his observation that the man in the picture, Mr. Bradfield, was arrested by an officer and taken away but incorrect in stating that Mr. Bradfield had been shaking the fence. I understand how Mr. West could have made that mistake. It was a fast moving scene and tensions, anxiety and feelings were running high. Mr. West said that, when the officers were at the fence with the man in the grey toque, Mr. Oppenheim was "up in front of me at least 50 feet, maybe 100 feet. Somewhere up probably near the trees." Mr. West said he could hear Mr. Oppenheim on his megaphone telling everyone to stay away from the fence. When it was suggested that Mr. Oppenheim was one of several who had shaken the fence, and that the fence then came down, Mr. West replied: "I will tell you that I did not see that at all."

I am satisfied that Mr. West, like Mr. Linder and Mr. Mauser, did not see Mr. Oppenheim at the fence at the time when Mr. Oppenheim, Cpl. McDonald and Cst. Kinsey agreed he was there.

24.4. The Arrest

I now turn to the circumstances of the arrest.

Acting Sgt. Rainey passed on the information he had heard over the radio about Mr. Oppenheim to RCMP Cst. Richard Rollings and pointed him out to Cst. Rollings. This happened in the general area where the initial road blockade was occurring, along Chancellor Boulevard near Gate 3.

Cst. Rollings somehow had it in his mind that Mr. Oppenheim was arrestable because there was a warrant out for his arrest. There was no such warrant and I am satisfied that that is not what Acting Sgt. Rainey communicated to Cst. Rollings. Nevertheless, that is what Cst. Rollings thought and, for that reason, he arrested Mr. Oppenheim while he was in the vicinity of the blocked roadway.

At the time of his arrest, Mr. Oppenheim was addressing the crowd, estimated by Cst. Rollings to be about 300 strong. According to Mr. Linder, Mr. Oppenheim was trying to calm people down because they were becoming concerned and very vocal with the police due to the previous pepper spraying incidents. He said Mr. Oppenheim was telling the crowd to be peaceful and avoid violence.

In taking hold of Mr. Oppenheim, Cst. Rollings said he was assisted by another officer, Sgt. Gary Mercer. Having succeeded in bringing Mr. Oppenheim behind the police line, Sgt. Mercer had no further contact with him. Sgt. Mercer acknowledged that his contact with Mr. Oppenheim was a matter of seconds, if that.

Cst. Rollings said that, as soon as Mr. Oppenheim was taken into custody, the crowd level increased dramatically such that he feared for his safety. Sgt. Mercer described the crowd as moving forward and, at that point, he yelled a warning and, for perhaps one second, "let go a cloud of OC spray" in the direction of the crowd, which then moved back. Cst. Rollings said he believed that Sgt. Mercer's actions "saved my bacon that day."

Mr. Oppenheim protested his arrest both verbally and physically. Cst. Sean Powell, who said Mr. Oppenheim was struggling and thrashing about, stepped forward and helped Cst. Rollings move Mr. Oppenheim to a police van parked nearby.

Cst. Rollings told Mr. Oppenheim that he was arrested pursuant to an outstanding warrant. Once Mr. Oppenheim had been placed in the van, Cst. Rollings, realizing that he did not know what the warrant was for, went back and sought an explanation from Acting Sgt. Rainey. Acting Sgt. Rainey's response was the same as he had initially expressed: Mr. Oppenheim was arrestable for mischief. Cst. Rollings said that he understood that the mischief had something to do with the fence and that it could have been a misunderstanding on his part "that there was a warrant for his arrest when in fact Bert Rainey may have just told me he was arrestable for mischief."

Cst. Rollings returned immediately to Mr. Oppenheim and told him that there was no outstanding warrant and that he was under arrest for mischief. Cst. Rollings said Mr. Oppenheim was in custody for about six minutes before he was told of the correct reason for his arrest. Mr. Oppenheim was then taken to the UBC Detachment of the RCMP where he was held in the cells until about 10:00 p.m. He was never charged with an offence.

24.5. Reasonable Grounds

I now turn to answer the question of whether Cpl. McDonald had reasonable grounds to believe that Mr. Oppenheim's contact with the fence constituted mischief and whether he was, therefore, entitled to direct his arrest.

Section 430(1) of the *Criminal Code* defines the offence of mischief:

> 430.(1) Every one commits mischief who wilfully
>
> (a) destroys or damages property;
>
> (b) renders property dangerous, useless, inoperative or ineffective;
>
> (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or
>
> (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

By his own admission, Mr. Oppenheim knocked off some plastic straps which connected the chain link fencing to the fence posts. Obviously, this conduct would have damaged the structural integrity of the security fence and interfered with its effectiveness.

Applying the test set out in *Storrey* (see Chapter 21), I believe that Cpl. McDonald subjectively believed that he had reasonable grounds to arrest Mr. Oppenheim for mischief and that his belief was objectively justifiable. He saw Mr. Oppenheim pop off the straps and the only reasonable conclusion was that it was a deliberate act, as indeed it was. He was therefore perfectly entitled to advise Cst. Rollings of the grounds and instruct him to effect the arrest pursuant to section 495(1)(a) of the *Criminal Code*.

The grounds for the arrest arose from the mischief committed by Mr. Oppenheim in removing the ties from the security fence near the School of Theology. It is not necessary for me to settle the issue of whether the RCMP had reasonable grounds to conclude that Mr. Oppenheim committed acts of mischief at and on the fence beyond the removal of the ties, as the police officers said was the case and which Mr. Oppenheim denied.

What Mr. Oppenheim did, by his own admission, was an irresponsible act of mischief. He did it with full knowledge of the events of earlier in the day at the security fence by the flagpole. He knew the vulnerability of the poorly constructed security fence, behind which line the world leaders were sequestered, with their safety dependent upon the abilities and performance of the members of the RCMP, including Cpl. McDonald and Cst. Kinsey.

Mr. Oppenheim knew that removing the ties would increase the vulnerability of the fence if it was attacked. He also knew, or should have known, that his actions at the fence, as an acknowledged and widely recognized organizer of the APEC protest at UBC, would be seen as encouragement, if not an invitation, to those behind him to take similar actions in respect of the fence, and this is precisely what occurred within seconds of his own deliberate, destructive conduct. Until Mr. Oppenheim went to the fence and removed the ties, the crowd was passing by peacefully towards the vicinity of Gate 3.

With leadership comes responsibility and, although Mr. Oppenheim was more than willing to assume the former, he proved somewhat reluctant to assume the latter.

The irresponsibility of Mr. Oppenheim's actions is compounded when it is appreciated that his reason for attacking the fragility of the fence was to make a statement about police use of pepper spray earlier in the day under circumstances that, as I have found, also displayed extreme irresponsibility by the APEC Alert leadership, in which Mr. Oppenheim was a major participant.

Complainants' counsel submitted that Mr. Oppenheim may have "inadvertently 'instigated' things by flicking off one or two ties as he went by." There was nothing inadvertent about it. His actions, which were bound to weaken the fence, were intentional and deliberate.

Complainants' counsel made the point that Mr. Oppenheim is not a man of violence and that he put considerable effort into ensuring that the actions of the protesters were carried out in a non-violent manner. There is no evidence that Mr. Oppenheim directly displayed any violent tendencies towards or against any person and I have no reason to conclude that he would initiate direct violence against another person. His agenda, however, was something more than that of the overwhelming number of protesters who participated solely to oppose APEC and all that it stands for, as evidenced by his actions during the day in the vicinity of the flagpole and his mischief at the security fence near the School of Theology. Regardless of the reasons that motivated Mr. Oppenheim to act as he did, his actions were, at times, unbefitting one allegedly committed to peaceful protest. While his actions described here were not violent in and of themselves, the potential for violence occurring as a result of his actions was very real. For that reason alone, his conduct as an organizer and leader of the protest movement was more than unacceptable it had to be stopped lest he continue on in an irresponsible manner, with potentially adverse consequences.

I find that the conduct of Cpl. McDonald, Cst. Rollings and all other members of the RCMP involved in the arrest of Mr. Oppenheim was appropriate to the circumstances.

25. COMPLAINT CATEGORY 13: GROEBNER ARREST

The complaint is that Johann Groebner was wrongfully arrested for an assault on a cameraman at the Gate 3 area after Mr. Oppenheim was arrested. The cameraman did not testify before the Commission and Mr. Groebner was never charged.

25.1. The Arrest

Mr. Groebner was not a student at UBC but, as a practising visual artist, frequently used the campus art library. He had cycled to UBC late in the morning of November 25. After watching the noon events near the flagpole, he made his way to Gate 3 where he understood there was to be a blockade of the motorcades leaving the leaders' meeting. He said the first person to sit on the road was immediately arrested. He thought police were initially uncertain about what would happen, but soon great numbers of people were sitting on the road.

By this time, Mr. Oppenheim was in the area, using his megaphone to invite protesters to follow him to close off another exit route. Mr. Groebner said that when Mr. Oppenheim was arrested, he and many other protesters immediately swarmed the area, demanding to know why Mr. Oppenheim had been taken away and shouting "Shame" at the police. He described the mood of police and protesters as panicky and agitated.

At this point, Cst. Dale Carr noticed Mr. Groebner walking "aggressively" through the crowd. A television cameraman who had come from New York City to film the events on campus was also in the crowd. Mr. Groebner was asked to explain what happened:

> I was moving away and I noticed someone following me, and I turned around and it was a cameraman who had a camera right in my face. And I moved away from him again, but he followed with the camera. So I turned around and pushed the camera to the side, out of my face. And the cameraman asked me why--what the problem, why I had done that. And at this point I was hauled away by an unknown number of Police from behind. And I resisted because I didn't see any reason why I should be pulled off at this time.

Asked why he had reacted in that way, Mr. Groebner said:

> I found the press to be quite intrusive and generally--generally from what I'd seen up at the main gate, almost endangering, or creating dangerous situations with the proximity to the police and the protestors. And I found his camera much too close. It became very intrusive at the proximity of his camera to me at the time.

When asked whether he had touched the cameraman, Mr. Groebner said:

> No, I didn't touch the cameraman, and his camera didn't touch him anymore than he was already holding it.

Mr. Groebner said his arrest occurred within seconds after he pushed the camera.

Cst. Carr was the officer who arrested Mr. Groebner. He said he was under instructions from an Inspector or a Superintendent, he was not sure which, to arrest anyone committing an offence where the opportunity arose. He said that Mr. Groebner's "smack" of the camera caused it to hit the cameraman on the side of the head and he considered that to be an assault. He said he viewed Mr. Groebner's conduct as an intentional act, which delivered a blow to the cameraman, rather than simply an involuntary movement of his hand. Cst. Carr testified that he didn't make any notes of the arrest because the situation at the time was quite chaotic, and he did not think that there would be any charges laid against Mr. Groebner. Asked what was his purpose in making the arrest, Cst. Carr said:

> The purpose to arrest Mr. Groebner was to--to remove him from the scene, to remove him from the area, as he'd just assaulted somebody and I was unsure at that time whether he was going to escalate his demeanour to assault even more people. Whether his--his actions, whether he would assault somebody else, would then create the crowd to become more volatile. I felt it important to--for the safety of the crowd and the safety of the police officers, to have Mr. Groebner removed, given his state of mind at the time.

Cst. Carr was asked whether he decided not to proceed with charges before or after he had arrested Mr. Groebner:

> A: My main concern was to have him removed and charges were basically the last thing on my mind, at that point.
>
> Q: And did you then turn your mind to charges after the arrest?
>
> A: Yes.

Q: And what was your decision at that time?

A: To not proceed with charges.

Cst. Carr said Mr. Groebner was only in his immediate presence for a matter of seconds as he quickly passed him over to other RCMP members and returned to his position in the police line. The cameraman then approached him and said: "I do not want any charges." Given that, and Cst. Carr's own decision not to proceed with charges, the officer was asked why he did not take steps to have Mr. Groebner released from custody. He explained:

> Mr. Groebner acted out in an aggressive manner and by releasing him right there again, nothing to say that he wasn't going to continue doing that same aggressive behaviour. And while that crowd was there, my concern was to not have him rejoin that crowd and--and act out again.

Cst. Carr said he saw no reason for Mr. Groebner to have lashed out at the cameraman. He said Mr. Groebner had to be removed from the area because he was creating violence in an area where people were gathered for non-violent protest.

Cpl. Patrick Walsh was also in the police line. He was not acquainted with Cst. Carr, but he made the same observations. Cpl. Walsh said that while police were trying to encourage protesters to leave the roadway, Mr. Groebner was verbally inciting the crowd to occupy the road. Mr Groebner denied this. Cpl. Walsh moved forward to make the arrest but Cst. Carr beat him to Mr. Groebner's side by one or two seconds. He helped in the arrest for 10 seconds or so but, like Cst. Carr, withdrew to let other members escort Mr. Groebner to an awaiting police van.

Cpl. Walsh believed that Mr. Groebner had a scarf pulled up over his face and his cap well down over his forehead. According to Cpl. Walsh, Mr. Groebner's face was "masked" and the TV camera appeared to be easily drawn to him. Mr. Groebner did have a scarf outside his jacket and around his neck but he denied that it was used as a mask. He said that, to subdue him as he protested his arrest, the police officers used his scarf as a tourniquet, which caused him discomfort but no ill effects. Both Cst. Carr and Cpl. Walsh denied that Mr. Groebner was subdued in this manner in their presence.

Mr. Groebner was initially told that he was being arrested for assault, but at the UBC Detachment he was handed a process sheet indicating that he was being held for breach of the peace, though he was never formally told that the assault charge had been dropped. He was then taken to the VPD Detachment in downtown Vancouver and released between 11:00 p.m. and 11:30 p.m. Charges were never laid.

25.2. Issues

It is not possible to resolve some of the discrepancies in the evidence given by the two officers and Mr. Groebner. That does not prevent me, however, from resolving the primary issues: namely, whether Cst. Carr had lawful authority to arrest Mr. Groebner. There are three possibilities. I must consider whether Cst. Carr was authorized to arrest Mr. Groebner:

1. for common assault, relying on the police power to arrest without warrant that is contained in section 495 of the *Criminal Code*;
2. for breach of the peace, pursuant to section 31(1) of the *Criminal Code*; or
3. for a reasonably apprehended breach of the peace, pursuant to the common law power to arrest.

25.2.1. Common Assault

Section 265(1) of the *Criminal Code* says that a person commits an assault when:

> without the consent of another person, he applies force intentionally to that other person, directly or indirectly. . . .

The legal threshold for common assault is a low one. The law has long held that the mere touching of a person in anger may constitute an assault.

25.2.1.1. Power to arrest

Section 495(1)(a) of the *Criminal Code* authorizes a police officer to arrest, without warrant, "a person who has committed an indictable offence." This aspect of section 495(1)(a) applies where the arresting officer personally witnesses the commission of the offence but was unable to prevent it or make the arrest before completion of the offence: *Klimchuk* (see Chapter 21).

In deciding whether an arrest is authorized under this section, a court will consider whether it would have been apparent to a reasonable person, standing in the shoes of the arresting officer, that an offence had been committed.

Cst. Carr believed he saw Mr. Groebner, who was very annoyed at the cameraman, strike out at the camera and cause it to hit the cameraman. I am not satisfied that the contact between Mr. Groebner's hand and the camera resulted in it hitting the side of the cameraman's head, as Cst. Carr believed it did, or his face, as Cpl. Walsh described it. Mr. Groebner denied that the camera hit the cameraman and the alleged victim (who did not testify at the hearing) immediately made it clear to the police, after witnessing the arrest, that he had no interest in seeing charges laid.

I am satisfied that Mr. Groebner took a swing at the camera simply to move it away from his person and that he did not intend to assault the cameraman. Nevertheless, I am also satisfied that Cst. Carr genuinely believed that an assault had occurred. Cst. Carr and Cpl. Walsh, perhaps quite understandably, but incorrectly I believe, mistook Mr. Groebner's action as an act of violence whereas it was simply an attempt by a very annoyed Mr. Groebner to move a camera out of his face.

Given the fact that Cst. Carr believed he saw the camera hit the cameraman's face, and the fact that the legal threshold for assault is extremely low, it would have been apparent to a reasonable person standing in Cst. Carr's shoes that a technical assault had occurred. A reasonable person, believing that he or she had seen Mr. Groebner intentionally strike out at the camera in annoyance and frustration, such that it made contact with the cameraman's head, would have been entitled to conclude that an assault had occurred.

If there were nothing more to section 495 of the *Criminal Code,* I would be satisfied that this section gave Cst. Carr the legal authority to arrest Mr. Groebner. However, subsection (2) of section 495 puts limits on that legal authority and I must consider whether they apply here.

25.2.1.2. Public interest limitations on the power to arrest

Section 495(2) of the *Criminal Code* provides that a police officer *shall not* arrest a person for certain offences (such as assault) if the officer believes, on reasonable grounds, that the public interest may be satisfied without arresting the person. One of the factors to be taken into account in assessing the public interest is the need to prevent the commission or continuation of an offence. If it is reasonable for the officer to conclude that the public interest may be satisfied without an arrest, the officer must not arrest the offender. In that case, the officer would issue an appearance notice or seek the issuance of a summons.

Cst. Carr testified that the purpose of arresting Mr. Groebner was to prevent him from assaulting somebody else and inciting the crowd to become more volatile, thereby endangering the safety of the crowd and the police officers. I am not satisfied that Cst. Carr had reasonable grounds to believe it was necessary to arrest Mr. Groebner in order to satisfy the public interest. Although Mr. Groebner's conduct may have technically qualified as an assault, it was a mere trifle and, were it not for the fact that Cst. Carr had been instructed by a superior officer to arrest whenever he detected any evidence of an offence, I believe it is highly improbable that he would have exercised his discretion to arrest Mr. Groebner. Although Cst. Carr may have reasonably believed that he had witnessed Mr. Groebner commit what was surely an extremely minor assault, he did not have reasonable grounds to believe that Mr. Groebner might repeat the offence or commit another offence.

I believe Cst. Carr and Cpl. Walsh to be honourable, competent police officers. Cst. Carr performed what he saw as his duty to maintain the peace and uphold the law. Cpl. Walsh was like-minded and would have made the same arrest had Cst. Carr not stepped in first. The fact is, however, that neither Cst. Carr nor Cpl. Walsh had Mr. Groebner under observation for any length of time. It was a snap decision prompted by one trifling act on the part of Mr. Groebner that caused Cst. Carr to move in and make the arrest. Cst. Carr's attention had been attracted by what he described as Mr. Groebner's "aggressive type manner" of walking through the crowd. I believe Cst. Carr acted precipitously in making the arrest. Accepting that he had a concern about Mr. Groebner's conduct, it would have been reasonable to keep him under observation, but it was not in the public interest to arrest him and take him into custody.

I conclude that Cst. Carr was prohibited from arresting Mr. Groebner by section 495(2) of the *Criminal Code*.

Although the arrest was not authorized under section 495 of the *Criminal Code*, counsel for the 44 RCMP officers also submitted that the arrest was authorized by both section 31(1) of the *Criminal Code* and the common law power to arrest for a reasonably apprehended breach of the peace. These arrest powers are not subject to the public interest limitations in section 495 of the *Criminal Code*. I will address the statutory and common law powers to arrest for breach of the peace in turn.

25.2.2. Breach of the Peace

Section 31(1) of the *Criminal Code* says that a police officer who sees someone breaching the peace is justified in arresting that person. A breach of the peace generally is conduct that actually harms or threatens to harm another person, or some other disturbance of the public peace. I do not believe that Mr. Groebner's conduct amounted to a breach of the peace, nor could it reasonably be construed as such, even if, technically speaking, it may have qualified as an extremely minor assault under section 265. While the slightest touching in anger may constitute an assault, I cannot accept that every assault is, as a matter of law, a breach of the peace pursuant to section 31 of the *Criminal Code*.

I conclude that section 31(1) of the *Criminal Code* did not entitled Cst. Carr to arrest Mr. Groebner.

25.2.3. Common Law Power to Arrest for Breach of the Peace

As discussed earlier in this report, a police officer may arrest a person in order to prevent an apprehended breach of the peace, if the officer honestly and reasonably believes there is a real risk of imminent harm: *Hayes*; *Brown*.

I am satisfied that the police were genuinely concerned about the situation getting out of hand immediately following Mr. Oppenheim's arrest. Cst. Carr found himself in the midst of an agitated crowd, with tensions between police and protesters rising, and with instructions to arrest for any offence if the opportunity arose. Seeing what he took to be an assault by Mr. Groebner, Cst. Carr arrested him. As he explained at the hearing, his intention was to remove from the scene a person who might commit another offence or incite the crowd to become more volatile.

However, given the trifling nature of Mr. Groebner's alleged assault, it was not reasonable for Cst. Carr to conclude that Mr. Groebner's continued presence presented a real risk of imminent harm. Rather, I believe that Cst. Carr was unduly influenced by his instructions to arrest anyone committing an offence whenever the opportunity to do so arose. He acted blindly on that directive without applying his mind to the factual situation he faced. Had he done so, I am satisfied that his better judgment would have told him not to proceed as he did at that time.

Therefore, the common law power to arrest for a reasonably apprehended breach of the peace did not entitle Cst. Carr to arrest Mr. Groebner.

25.3. Arrest Not Appropriate

Given all of my conclusions with respect to the possible sources of authorization for this arrest, I conclude that the arrest of Mr. Groebner was not appropriate to the circumstances.

26. COMPLAINT CATEGORY 14: REMOVAL OF MEGAPHONE

Law student Brenna Bhandar attended the demonstration at the flagpole and joined the protesters sitting on the road near Gate 3. After seeing two protesters arrested she used a megaphone to urge the crowd to remain seated on the road. The complaint is that an officer wrongfully grabbed the megaphone from her and took hold of her arm.

This complaint was supported by the evidence given at the hearing by Ms. Bhandar. Although she was not a complainant in these proceedings, she consented to Mr. Oppenheim bringing this incident within the umbrella of his complaint. Mr. Oppenheim did that by including the following in his letter of complaint:

> One woman, Brenna Bhandar, was addressing the blockade on Chancellor Blvd through a megaphone when she was assaulted by an officer who then ripped the megaphone from her hands. He later identified himself as officer Bracewell.

Mr. Oppenheim was not present when the incident occurred. He had been arrested moments before and taken away.

Mr. Oppenheim was incorrect in his identification of Cst. Bracewell. The officer who acted in the manner described by Ms. Bhandar was a member of the VPD, Insp. Christopher Offer, now retired. Immediately before this incident, Insp. Offer was part of the police line formed to prevent the protesters from moving forward. Cst. Bracewell, who was close by, saw that Insp. Offer had left his position in the line during a time of some commotion and Cst. Bracewell moved into the vacancy created by Insp. Offer's departure.

Ms. Bhandar said that very much on her mind were the arrests of the first person who had sat on the road that afternoon and of Mr. Oppenheim, which followed soon after, as well as Jaggi Singh's arrest the day before. When asked what she was saying over the megaphone, Ms. Bhandar said:

> And so I was saying through the megaphone, that even though they are targeting and arresting people who they think are these leaders, we should stay on the road and stay seated.

Soon after her megaphone was seized, Ms. Bhandar and some friends approached Cst. Bracewell as he stood in the line and asked him to identify himself, which he did immediately. Ms. Bhandar was questioned about this:

> Q: Now, you've testified that after your megaphone was taken away, you approached a Police Officer who you thought was the Officer who had taken your megaphone and you asked for his name?
>
> A: It was just in the moments after that had happened. I mean, I was just sitting on the ground for just--after my friends had pulled me back down and then we sort of stood back up to ask for his name and his identification.
>
> Q: Okay. And that Officer identified himself to you as Constable Bracewell?
>
> A: Yes.

I have no doubt that Ms. Bhandar sincerely believed that Cst. Bracewell was the officer who had taken her megaphone. She was mistaken. She was unaware that Cst. Bracewell had stepped into Insp. Offer's place in the line. There was no conversation with Cst. Bracewell about whether he was the officer who had taken the megaphone. Ms. Bhandar approached Cst. Bracewell believing that he was that person.

The evidence of the two police officers satisfies me beyond any doubt that Cst. Bracewell was not involved in the incident involving Ms. Bhandar. He was aware of the disturbance and confusion at the time of the incident but he did not see the actual taking of the megaphone. Insp. Offer unhesitatingly accepted responsibility for seizing the megaphone. He explained:

> I seized the megaphone. I could hear this--the woman, I don't recall her name, but, the woman encouraging the group to sit on the road. She was using the megaphone then to encourage people to go to other--another gate, suggesting that the motorcades were going to come from some other direction. I--in my opinion, she was counselling people to commit mischief, a criminal offence, a breach of the peace and she was using this to organize the groups to go down to other gates. I had a conversation with Acting Sergeant Rainey, he went out and talked to the people, directing their attention towards him. I called her over to the Police line. She walked

> over there. I grabbed the megaphone and wrenched it out of her hands and pushed her back.

I have no jurisdiction to address the alleged actions of members of the VPD. No RCMP members were involved in Mr. Oppenheim's complaint regarding the seizure of the megaphone and the alleged assault against Ms. Bhandar. That concludes my consideration of the matter.

27. COMPLAINT CATEGORY 15: POLICE IDENTIFICATION

There were several complaints that RCMP officers at various times either did not display name tags or refused to identify themselves to members of the public.

Several of the police officers involved in these complaints were members of the Vancouver Police Department and with respect to those officers, this Commission is without jurisdiction.

I am satisfied that the RCMP officers who prepared front line members for their APEC duties as well as the RCMP members who performed those duties appreciated the requirement and the importance of identification. Most contact by protesters with police was with Quick Response Team members. S/Sgt. Stewart, as part of his responsibility for the performance of those teams, gave the following evidence on this issue which I accept:

> Q: All right. I want to ask you a bit about the dress and equipment of the group, because one of the issues that's before this Commission, is that some personnel did not have name badges, which would have enabled them to be identified. You're aware of that issue?
>
> A: Yes, I am.
>
> Q: Was that a situation that--that you concerned yourself with?
>
> A: I was very concerned from the outset that the Members of the QRT, as we were always within the public eye, were properly dressed and turned out as per the RCMP uniform and dress manual. Therefore I expected all Members to wear their name tags on their uniforms and patrol jackets, and that was in fact, included as part of our joining instructions. The instructions sent to the Members, telling them what items of kit and clothing to bring with them to Vancouver.
>
> Q: Right, now did you take steps to ensure that there was compliance with those instructions?
>
> A: Actually, at the outset we found that, as typical when people pack to travel for a journey, they forget things, and that a number of our Members had forgotten their name tags. We made arrangements and had name tags produced at the Pacific Centre Mall, and they were required to be worn on a daily basis, and the Members were checked for them throughout the day.

Cst. Bracewell was one of the Quick Response Team leaders. He said that S/Sgt. Stewart's direction to the team leaders was consistent with what I have just quoted from S/Sgt. Stewart's evidence. Cst. Bracewell said:

> Dress and deportment once in uniform for the QRTs was of paramount importance. We were advised that name tags were to be worn on shirts and jackets at all times. And that name tags were obtained for Members, prior to deploying if they were deficient in one or both name tags. Name tags had to be worn and had to be clearly visible.

Cst. Bracewell said he constantly checked to see that members of his Quick Response Team were properly dressed and wearing name tags.

Throughout the day, Cst. Sean Powell was assigned security duties along the fence line in the vicinity of Gate 3. He explained his understanding of the instructions pursuant to which he was performing his duties:

> My understanding is that we are--we are instructed to wear name tags and repeat our names when asked. No doubt about that. But, if somebody is yelling and screaming at me or being belligerent, I feel no obligation to answer questions from that type of individual.

In my opinion, this qualification to the requirement is a reasonable one. There were also reasons why identification was not always visible. For instance, some officers on November 25 wore rainproof attire, which could not be punctured with clips or pins if the rain-proofing was to be effective. In those instances, name tags worn on the jacket or shirt would not be visible but an officer who was asked to identify himself or herself would be expected to respond as Cst. Powell indicated.

Protesters often did not distinguish between RCMP officers and VPD officers who performed the same duties at the same time and location. Some members of the VPD Bike Unit, which formed part of the Quick Response Teams, were without their name tags because they were new in the service and their identification tags had not arrived by the time of the APEC conference.

Complaints about lack of identification did surface from time to time during the presentation of evidence but the issue was not addressed in closing submissions other than by Commission Counsel as they objectively reviewed the evidence on the matter. Having considered that submission and the evidence on the issue, I find no inappropriate conduct on the part of any RCMP officers. Nor does any *Charter* issue arise out of these complaints.

I believe officers were aware of the responsibility to wear identification and to respond to appropriate requests for identification. They complied substantially with that requirement. Any failure to do so, I believe, can be explained either by reasons referred to above, or by physical contact between police and protesters that could have resulted in name tags being temporarily dislocated.

28. COMPLAINT CATEGORY 16: PROTESTERS MOVED FROM GATE 6

The complaint is that peaceful protesters at Gate 6 were ordered to clear the road and then pepper sprayed before they had a chance to do so. Some were pepper sprayed as they were leaving. Others were pepper sprayed as they stood watching. Mark Brooks was arrested and pepper sprayed as he was asking for calm. Decontaminant services following the spray were said to be insufficient and inadequate.

28.1. Clearing the Road

As the time approached for the leaders to depart from the campus at the close of their meeting the afternoon of November 25, a group of 50 to 60 protesters had gathered in the vicinity of Gate 6. Some were sitting and some were standing on Marine Drive, blocking the exit route that the motorcades would soon need to pass through. According to witnesses, the mood was calm and the protesters had indicated that many of them would voluntarily leave the roadway if required to do so.

However, the remaining two exits from campus were also compromised by groups of protesters, time was short, and S/Sgt. Stewart was directed to clear the road.

In Chapter 12, I described the arrival of S/Sgt. Stewart with two Quick Response Teams at Gate 6. He was also accompanied by Sgt. McLaren, Sgt. Mercer and Cst. Fulks, bringing the total number of RCMP officers present to about 40. S/Sgt. Stewart carried a Mark 46 canister of pepper spray. Sgt. McLaren and Sgt. Mercer were similarly equipped.

Insp. Killaly recalled telling S/Sgt. Stewart, as he approached the front of the line that had formed across Northwest Marine Drive, that "we have to move these people off the roadway and do it now."

Unfortunately, nobody briefed S/Sgt. Stewart about the prevailing mood among the protesters at the site. Insp. Killaly described the scene before S/Sgt. Stewart arrived as "fairly quiet" and "fairly laid back." Megan Hunter, a first year student living nearby had heard people chanting slogans and came to join in. She said that Mark Brooks used a megaphone to remind everyone they were there for a peaceful protest, that the police were not the enemy - they were doing their job - and the protest was against APEC, not the police.

Once the two police vans arrived and the officers disembarked, Ms. Hunter said, tension rose on both sides, particularly among the students as they were not sure what the police were planning to do. She said that at this time Mark Brooks said to police, using the megaphone, that a lot of people wanted to leave the road and were not interested in being arrested. He asked "that the police give us warning so that we would have a chance to clear the road."

S/Sgt. Stewart approached his task with misconceptions about the Gate 6 protesters clearly in his mind. He said that, before he left Gate 3, other officers had described to him the "resistive nature" of the protesters at Gate 6 and told him that they had been asked to move to allow two buses through but had refused. This was incorrect. He said he also had information that some of the students were determined to stay on the road and be arrested. In my view, it was premature at that time for anyone to come to this conclusion. Had he communicated with any officer who had been there for the preceding hour, S/Sgt. Stewart would have learned something very different about the frame of mind and the relative composure of those on the roadway.

Instead, without any understanding of the frame of mind and disposition of the protesters before him, S/Sgt. Stewart, with his eye on his watch, moved in to accomplish the task that had been so hastily devised, communicated and assigned to him.

At the front of the police line, facing the protesters, and in a firm, forceful and decisive tone, S/Sgt. Stewart delivered his message:

> Ladies and gentlemen, my name is Staff Sergeant Stewart. I am clearing this roadway, You have one opportunity to move up that road and clear it off or you will

> be arrested. I am going to use force, whatever force I deem necessary. I do not intend to fool around. I intend to clear this road. I intend to clear it now. Put the dogs on the side, you are going that way.

After a lapse of one or, at most, two seconds from completing his command, S/Sgt. Stewart hit the spray button. He said that when he saw the actions that were being taken, he judged that he had allowed the protesters sufficient time to absorb both his presence and his command and to respond. He explained:

> A: It would normally not be enough time, sir, at all. However when persons, that I observed, that were in front of me, began taking action to defeat the use of OC Spray, and bearing in mind the circumstances throughout the course of the day, what I knew about the protestors that were on the roadway, that I had information of other protestors coming over land to reinforce Gate 6. That some protestors in front of me began to stand up and then locked arms and went back to sit down again, then I realized that they were taking the definitive action and that I must respond in kind and I stepped up one level and used OC Spray.
>
> Q: Sir, we cannot find a photograph or a moving video picture of people locking arms together as you've described. How many people, do you say, locked their arms together?
>
> A: There was three in front of me.
>
> Q: Three in front of you.
>
> A: That began standing up. A man and two women.
>
> Q: Hmm hmm.
>
> A: And the man locked the arms with the women. And two other persons began moving their facial coverings, Which suggested to me, as I'd experienced throughout the day, that they were determined to resist OC Spray. I also recognized at least one person who had been actively involved in the incident at the flagpole and had been subjected to OC Spray, at that time, and he was also there.
>
> Q: Now, just to back up a moment. You say the three people started to stand up and locked arms?
>
> A: Yes, and sat back down, sir.
>
> Q: And sat back down?
>
> A: Yes, sir.
>
> Q: And were there others that were sitting down?
>
> A: At least two, sir.
>
> Q: So do we have a total of five that were seated, in your vision, at least?

A: Yes, sir.

S/Sgt. Stewart explained that if people took the opportunity to mask themselves against the pepper spray, as did two who remained seated, he would have to advance a level beyond the spray and use a closed hand technique to move them off the roadway. He said he dispersed the pepper spray to avoid having to do that. He explained why:

> Throughout the course of the day, through all the pushing and all the --the difficulties that the Police had been subjected to, through members being physically shoved and assaulted, not one punch was thrown by a police officer, not one baton was used. And I intended to get through that day, without doing that.

S/Sgt. Stewart acknowledged that, in the nine seconds or so from when he began speaking until the spray started, almost all of the protesters present, both standing and sitting, were taking appropriate steps to comply with his words. He said that this left him with five persons remaining on the road, with two of them intending to defeat the OC spray.

Sgt. Mercer accepted that the time between the conclusion of S/Sgt. Stewart's directive to the protesters and S/Sgt. Stewart's use of pepper spray could have been about one second. Sgt. Mercer was then asked if he agreed that one second would not be sufficient time to allow the crowd to respond to a verbal command:

> I disagree with you, because I think what--as I said in my evidence-in-chief, while he was giving the order that he was giving, we were watching people link arms and hold things up over their face. I don't think that any time after that was required. They had already made up their mind, which is what I've said.

Sgt. Mercer said he formed the opinion that the crowd was not going to comply with S/Sgt. Stewart's directive so he followed suit by spraying just over the heads of the seated crowd. He believed that the most effective way of causing them to leave would be to make the intersection an uncomfortable place to be.

Sgt. McLaren soon followed by releasing his pepper spray. He said that, before he did so, a fair number of people had got up off the road and were moving towards University Boulevard but a group of 20 of them were standing near where University Boulevard joins Northwest Marine Drive so he sprayed in their direction to cloud the area in front of them and discourage them from returning to the intersection. At that point, S/Sgt. Stewart told him that that was enough spray to dispense. The result was that those 20 or so persons did in fact turn and head up University Boulevard.

CBC Cameraman Rob Douglas had arrived in the Gate 6 area about 3:10 p.m. He estimated that there were about 30 protesters present, about 12 sitting and the rest standing on the road. He was asked to describe what he observed:

> A. The fellow--one of the students with the megaphone, at that time, made several comments to the effect that, they were just here to sit in the road. They were not going to cause any trouble. It was a peaceful protest. That if--they assumed that they would be given time to clear the road, and at that time anyone who did not want to be arrested, should leave. I guess that's pretty much it.
>
> Q: Okay.
>
> A: Roughly half an hour later, I'm just guessing now, many more police officers arrived. The total now would be, I would guess maybe 40 or 50. I'm just guessing here. At that point Hugh Stewart, came up to the barricade--I was standing right at the barricade, so he passed very close to me, within three feet. The barricade was opened, and he came through. He had a very large canister of pepper spray with him. At that time, he introduced himself to the students, he said, he was going to clear the road, he was going to use any force he deemed necessary. They had one chance to move or they would be arrested. At this point, the students immediately, in front of me, the ones sitting in the road, stood up to leave. And he pepper sprayed them.

Mr. Douglas, who said he did not see any of the protesters exhibiting aggressive behaviour, received considerable spray in his eyes during the discharge of spray by S/Sgt. Stewart. That matter will be addressed separately in this chapter.

Ms. Hunter described what she saw when she and her friends joined the protesters some time after 3 p.m.:

> A. When we got there, there was a group of protestors sitting on the ground. Then there was some big sawhorse, kind of barricades across the road. And a couple of lines of police officers on the other side of those barricades, probably 20 Police Officers, in that range.
>
> Q: Okay.
>
> A: And it was just a very laid back environment at that point. People were joking around, and the police officers seemed quite calm, joking around,

Q: All right. And what sorts of things were the protestors doing, for example?

A: People were chanting slogans a bit, the megaphone got passed around, at some point, and people were just voicing their opinions on APEC and things. And Mark Brooks, who--well, the guy I later found out was Mark Brooks, the man with the megaphone, was reminding everyone that we were there for a peaceful protest and reminding everyone that the Police were not our enemies, they were there doing their job and we wanted to protest against APEC not against the Police.

Q: Okay, carry on, what happened then?

A: Then Staff Sergeant Stewart came up to the barricade; identified himself, said that he was going to clear the road. So, as soon as he came up and identified himself, I stood up and started to leave because, like I said before, I had absolutely no interest in being arrested.

Ms. Hunter said she was nearing the edge of the road as the pepper spray started. She said she saw a number of people attempting to leave the road who got sprayed.

Robert West, a former UBC student, was amongst the protesters. He also heard Mr. Brooks speak through his megaphone as the vans arrived, but before S/Sgt. Stewart and his Quick Response Teams had reached the barricades. He said Mr. Brooks specifically turned to the officers and said: "before you clear us off the road give me five seconds to get these people off the road before you do anything."

Ms. Andrea Neyedli was a first year UBC student and one of those seated on the road. She described her experience:

A: So the one man in front walked up to the barricade. They started removing the barricades. He identified himself as Staff Sergeant Stewart; made it clear that he was clearing--going to clear us off the road, and that he would use any force necessary. There was no pause for me, as I remember, I got up. I was in a half crouched position, and ready to leave, and immediately I was hit directly in the face with a gust of white pepper spray.

Q: Do you recall how much time passed from the time you first heard Staff Sergeant Stewart give you a warning, to the time that you were hit with the spray?

A: I would estimate that from the point that he opened his mouth and said his name, to the point that we were sprayed, maybe it was 10, 20 seconds.

Q: And was it your intention when asked to move, to move?

A: It was my intention to move to the side of the road, because I had assumed that we would be allowed to do that.

Q: Right. And carry on and describe what happened to you next?

A: I was--as I said, I was in a half crouched position, standing up, and I got sprayed from the front. I have no idea who sprayed me. I turned, I had my hand covering my face, and took a couple of steps back--or, back towards University. I was definitely incapacitated by the first gust of pepper spray. It had hit me straight on, and I was blinded. After I took the two steps, I saw a dark figure in front of me, and felt another blast of pepper spray hit me again.

Q: Where did it--

A: Pretty much point blank.

Q: I'm sorry. Where did it hit you again.

A: Straight in the face. And then, at that point, I screamed very loud, and started running in a diagonal--well, not running, stumbling--in a diagonal line towards University Boulevard.

Ms. Neyedli emphasized that, by not allowing her enough time to get on her feet before she was sprayed, the warning given had been unfair. She said that, when she arrived, she was not prepared to do anything illegal nor to resist the commands of the police. She continued:

A: I was there to be seen. I had a point to make. I feel very strongly about that point and I think that it is my right, as a human being, to be able to express that.

Q: Mr. Brooks, had indicated to you that if you sat on the road, you would probably be arrested; hadn't he?

A: I think that he indicated that if we sat on the road and resisted the Police orders that, yes, we would be arrested; I think that's common sense.

Mr. David Wolinetz was a student at UBC. He was one of two or three who were sprayed while still seated on the road. He was asked what happened when S/Sgt. Stewart arrived:

A: Previous to his arrival, there had been an influx of Police Officers, I believe when he got there, they did outnumber us. And as I remember it, he marched up with a group of officers, holding a large canister and he identified himself as Staff Sergeant Stewart, said that he had been ordered to clear the road, he intended to use force, he didn't intend to fool around. And at that point began pepper spraying immediately.

Q: Okay. And what, if anything, were you doing immediately before he started pepper spraying?

A: I basically was listening to what he said and then I got hit with--with a blast of pepper spray.

Q: Okay, had you taken any steps to protect yourself?

A: I believe when I saw the can of pepper spray I did pull my sweater over my nose because I'd been sprayed earlier and I was honestly quite afraid of the stuff.

Q: Okay--and that--would you have done that before he started pepper spraying, or?

A: I believe I did before.

Q: Did you make any attempt to get up?

A: I think I had my hands on the ground initially to push myself up, but I didn't have a chance to begin moving.

Q: Had you made up your mind - at the moment the pepper spray began - had you made up your mind whether to stay on the road or whether to leave?

A: No I hadn't, I--when I saw the can of pepper spray I was--I was pretty much decided I was going to leave, but I hadn't--I--I don't--I guess I wasn't a hundred percent settled in my mind.

Q: Okay. All right and what happened to you after you--first of all, where did the spray get you?

. . . .

A: As I--It's not one hundred percent clear, but as I remember it, I was hit directly in the face with a large burst and then--I--after that I immediately kind of curled into a ball almost and covered my face and what not, and I just remember being sort of having the feeling of being sprayed up and down--like I was being sprayed with a hose or something.

Q: All right?

A: So, more or less all over, like dripping wet.

Q: Okay, and when you curled up, were you still presumably on the roadway; were you?

A: Yes I was.

Q: All right, and what happened to you then?

A: I believe that I really--I was totally incapacitated--I believe I was grabbed by several Police Officers and led over to the left hand side of the road. From this point onwards I didn't have any vision, so this is just based on my other senses.

Mr. Wolinetz said he expected the police would ask the protesters to leave and that any who refused would be arrested. He said he assumed that this would be done with sufficient time so as not to interfere with the schedule for moving the visiting leaders to wherever they were going. He believed that as long as nobody posed a physical threat no force would be used.

Mr. Andrew Donald was a UBC student in residence at Place Vanier. He came out to see what was taking place. He said that the majority of the protesters obeyed S/Sgt. Stewart's directive and got up to move away but some of them chose to stay. He said a lot of those who got up to move were struck with pepper spray.

The foregoing review prompts me to raise and answer two questions. I will then consider additional matters arising out of the Gate 6 incident, including the manner of the deployment of the pepper spray, the movement of the protesters up University Boulevard, the spraying of Robert Douglas, the arrest of Mr. Brooks and the decontamination procedures that followed the arrests of Mr. Wolinetz, Mr. Brooks, Rex Bailey and one other.

28.1.1. Use of Force

I will paraphrase the two critical questions framed by Commission Counsel:

1. Did S/Sgt. Stewart give the protesters enough time to comply with his order to move, considering all of the circumstances?
2. Was S/Sgt. Stewart's use of pepper spray at that time a justifiable or appropriate use of force?

28.1.2. Were Protesters Given Time to Respond?

Since the moment that this Commission closed its final session on June 30, 2000, I have not had the slightest doubt that the answer to the first question is a clear and unequivocal "no." S/Sgt. Stewart did not give the protesters enough time to move before releasing the pepper spray.

In the nine or 10 seconds from the start of his directive until he pressed the lever, all those seated on the road could not possibly have risen and moved beyond the range of the spray. Many were sprayed even though they did not wait for S/Sgt. Stewart to complete his remarks before making their move. Those who waited until his directive was completed before deciding what to do were doomed. For them there was no escape.

I believe Mr. Wolinetz when he said that, when he saw the can of pepper spray, he had pretty much decided he was going to leave but was not 100% settled in his mind. He and the others still seated on the road - it appears there were four others but there could have been one or two more - should have been given the opportunity to decide what they wanted to do in light of the firm, forceful and decisive message delivered by S/Sgt. Stewart as he stood before them with the large canister of spray in his hand.

Sgt. McLaren, who stood in the front line with S/Sgt. Stewart and Sgt. Mercer, said that, on his arrival, he had his Mark 46 canister in his coat with his hands free. As they approached the line, he could see some starting to get up but there were some sitting without moving at all, so while S/Sgt. Stewart was addressing the protesters, Sgt. McLaren said he took out his canister to show the people that he was armed with pepper spray as well.

It will never be known what would have happened if S/Sgt. Stewart had waited up to a minute and repeated his warning. While S/Sgt. Stewart believed that the intentions of the two protesters who began moving their clothing over their faces were clear, that cannot justify the precipitous spraying. The other three should have been given more time and even those two protesters, with more time, might well have changed their minds.

The facts are clear: S/Sgt. Stewart did not give the protesters enough time to comply with his order to move.

28.1.3. Was Pepper Spray Justifiable?

I now turn to a consideration of the second of Commission Counsel's questions: namely, whether S/Sgt. Stewart's use of pepper spray was a justifiable or appropriate use of force.

I have found that S/Sgt. Stewart's use of pepper spray on two previous occasions, one earlier the same day and the other on the late afternoon of November 24, were justifiable and appropriate uses of force. In those two situations there was violence, with a possibility of its escalation. The protesters at the flagpole at the time of the Malmo-Levine arrest and those at the centre of the November 25 noon rally were not passive and peaceful, as I accept the Gate 6 protesters were. I view that difference as being of major significance as I answer the second question.

After police presence and then dialogue, which in this instance was really a monologue, S/Sgt. Stewart saw his options as being "open hand techniques, which includes OC spray" and then "closed hand techniques" which he said would be inappropriate. Sgt. Mercer was asked about levels of force:

> Q: Sir, what level of force is available to you prior to using pepper spray?
>
> A: Conversation and open hand.
>
> Q: And when you say "open hand", what do you mean by open hand?
>
> A: Physically lifting, pushing, leading.

S/Sgt. Stewart explained his objection to lifting people up and carrying them away:

> Well, lifting people and carrying people causes two types of injuries. Injuries to the individuals that resist as they passively resist and go limp, and injuries to police officers who try and lift them. When people are locked down in that position and you have to use pain compliance holds to get them off and move them, there's a high potential for injury.

In assessing the appropriateness of the police response, I have to assume that about five people would have remained on the road. Had a reasonable period of time been given to comply with the directive, the number may well have been less. I have difficulty in appreciating why some of the 40 officers present could not have used the "open-hand" technique identified by Sgt. Mercer to quickly and successfully move those five people off the road and, if necessary, restrain them until the motorcades had passed. I find considerable assistance in resolving that difficulty in the following evidence of Insp. Ryan which I accept:

> Q: I'm going to ask you to assume that prior to any significant interaction with the police, protestors have indicated that they're there for a peaceful protest. According to

standard police practice, if protestors are seated on a road and they've expressed an intention of peaceful protest, what are the options available to the police?

A: Initially, tactical communications; no compliance, then arrest.

. . . .

Q: Now, I'm going to ask you to assume that the--some protestors may have chosen to remain on the road in order to be arrested. When the police are dealing with a situation where they understand that some protestors will not agree to be removed, what are the strategies or tactics available to the police, according to standard police practice?

A: Tactical communications, empty-hand techniques, and if there's compliance, then they're removed. If there's not compliance, then the force level escalates on the part of the police and can include OC spray if there is active resistance. If the behaviour by the individuals changes to the point where it becomes assaultive, then of course, the police tactical options increase accordingly.

Q: According to standard police practice, if the protest behaviour is only passive resistance is OC spray an option?

A: No.

. . . .

Q: I'm assuming 40 to 50 protestors being present and a minimum of 30 police officers being present. And based simply on those numbers of individuals there, does that limit in any way the options available to the police according to standard police practice?

A: No, not at all. Numbers of police officers and numbers of citizens, if I understand you correctly, they're almost equal?

Q: Close to it, but I'm asking you to assume that at a minimum that there's 10 to 20 more protestors there than police.

A: It doesn't limit the tactical options available to the police. Certainly it would assist with the number of the--the tactics that the police would employ and could employ. And not limiting them, it actually creates more options for the police--

Q: All right--

A: --because of the--the almost equal number.

Q: Could you explain to the Commissioner what the tactics would be that would be added--or would expand the range of tactics?

A: Now, you're talking about a situation where police officers--it's a concept called economy of force. You could detail two officers to effect arrests of passive-resisting protestors. And because of the--you're talking 40 demonstrators and 30 police officers, there's a reduced risk of retaliation by the crowd to the--to the arrest of those people, in terms of the number of police officers you need to--to maintain control of that scene.

. . . .

Q: Now, assuming that a police officer has given a clear and direct command to protestors to leave the roadway, and assuming that that officer is acting under a time constraint of no more than five minutes, is there a police practice that would indicate how much time the protestors should be given to either respond--or--or to respond to the--the command?

A: The practice is to allow as much time as possible for people who received the verbal warning, to act on it. Because of the short time line, that would be somewhat restrictive. However, you still need to have--to give people time to react to your warning.

Q: And assume that, once the command is made, it's possible to view some protesters moving from the roadway. Would that militate in one direction or another, as to how much further time should be given to the protesters to react?

A: I think so. That's--that would be indicating that there is a--the desired effect of the warning is happening on those individuals. And certainly, it would require the opportunity for other people to act in the same manner.

Cpl. James Dickson was assigned to assist S/Sgt. Stewart in his Quick Response Team duties. He agreed that when dealing with political protests or people who are trying to make a point, and subject to existing circumstances, the standard RCMP routine is to physically move people off the roadway. This can be done either by leading the person by the arm, or by the use of collapsible stretchers. There was one such stretcher in each of the two vans that were parked a very short distance from the police line. However, S/Sgt. Stewart's view was that his timetable did not allow for their use. I am not certain that is so nor am I certain that their use would have been necessary for the removal of the few who remained on the road.

Cpl. Dickson said the stretchers were used by the RCMP in British Columbia to move uncooperative people over distances that create difficulty. The distance involved here was minimal and the terrain did not present a problem.

Before stretchers were available, Cpl. Dickson said, the practice was for officers to physically take hold of uncooperative protesters and move them off the road. That method remains an option.

I have considered the RCMP policy on the use of force and the RCMP's National Operational Manual and Incident Management Intervention Model. Since the Model was adopted as RCMP policy in May 1997, the RCMP's use of force policy is no longer given as a continuum but, rather, a list of options available to an officer. It is not necessary to go through a progression of escalating force options before an officer may act.

Undoubtedly it was S/Sgt. Stewart's limited time frame that caused him to go so quickly to the use of OC spray. He was not bound by policy to do so. Indeed, his immediate use of it was contrary to standard RCMP procedure regarding political protests. No violence was evident. While S/Sgt. Stewart had the experiences of earlier in the day clearly in his mind, the passive nature of those seated on the roadway had not been communicated to him. He nevertheless should have taken advantage of the technique identified by Sgt. Mercer, that is, physically lifting or leading the protesters away, as being an option to the use of pepper spray.

I can only conclude that S/Sgt. Stewart's use of pepper spray on that occasion was not a justifiable or appropriate use of force.

I have no difficulty with the three officers taking the three large canisters to the line with them. The experience of the preceding 24 hours had shown the effectiveness of that weapon when police were faced with violence. There was reason for them to be ready to meet that kind of behaviour and a display of available force had the potential to be effective in itself. I believe, however, that with the time available, at least one minute could have been given in addition to the one or two seconds that passed after S/Sgt. Stewart completed his warning to the crowd. If the few remaining persisted in their refusal to leave, there were enough officers with the required experience to physically remove them. That could and should have occurred without resort to the use of pepper spray. Pepper spray was not required to move the protesters. It should not have been used.

28.1.4. Absence of Leadership and Support

The position S/Sgt. Stewart found himself in as he faced the protesters on that road was the result of the same ineptitude and inadequacies that had caused panic to reign at Command Centre and in senior RCMP ranks on the UBC campus from the moment that afternoon that it sunk in that the world leaders were captives behind blocked exits and that there was no plan in place to address the resulting crisis.

S/Sgt. Stewart was at that time a man under stress. He acknowledged that "there certainly was a degree of pressure to do the job." According to Insp. Killaly, there was "definite pressure on Staff Sergeant Stewart to clear that road and to clear it quickly."

Insp. Ard saw the availability of S/Sgt. Stewart and his Quick Response Teams to open Gate 6 as "a gift from heaven." If indeed it was, S/Sgt. Stewart might have expected it to be supplemented by some earthly guidance from those in command. There was none. Rather, he was given a matter of minutes to achieve the objective set for him. He was told to go and get the job done.

Deputy Chief McGuinness had referred to the possibility of stacking the motorcades at the Museum of Anthropology if the two busloads of officers from downtown had not arrived at Gate 6 by the posted departure time, and yet no thought was given to implementing such a contingency plan while S/Sgt. Stewart completed the assignment handed to him. As I have indicated, neither Dep. Chief McGuinness nor Supt. Casey, who earlier in the afternoon had expressed reservations about delaying the departure of the motorcades, were aware that S/Sgt. Stewart had come to the rescue. Commission Counsel correctly summarized the expert evidence on the option of delaying the departure of the motorcades:

> C/Supt. French said that if there were only four or five minutes to clear Gate 6, the first tactical option would be to stop the motorcade from coming to that area until it could be secured. He would also expect that this would have been considered in the planning stages and that there would be a clear protocol in place to stop the convoy from coming.

> C/Supt. Milton testified that, if the roads were blocked, he would want them cleared as soon as possible. He said that a delay of the motorcades for five or ten minutes is reasonable, although he would still have to provide an explanation to the delegations.

S/Sgt. Stewart said it had not occurred to him that it might be possible to delay the departure while he carried out his task. In any event, such a delay would not have been his decision. He was outside the command and policy loop.

Command Centre, which was responsible for the site at this time, was not in contact with the members at Gate 6 other than through watching the aerial pictures. Insp. Killaly testified that he had no discussions at any time with Command Centre about clearing the blockage at Gate 6.

In my judgment, once the decision was made at Command Centre to clear Gate 6, those holding responsibility at the Centre ought to have, for security reasons, put in motion a chain of events that could have resulted in a short delay in the departure of the motorcades if appropriate. That did not occur. Certainly it would have required communication between Command Centre and the officer in command at the site, of which communication there was none, in order to give S/Sgt. Stewart additional time to accomplish his objective.

The conduct of RCMP members in failing to make contingent arrangements to delay the departure of the motorcades until S/Sgt. Stewart had the opportunity to clear the road in a reasonable manner was not appropriate to the circumstances.

The fact is that the first motorcade did not arrive for 10 minutes after the clearing of the Gate 6. This was of course unforeseen by S/Sgt. Stewart but, with all of the radio and phone communication systems available, I am unable to accept that the motorcades would ever have been sent down Northwest Marine Drive until it was known that the passage was clear and S/Sgt. Stewart should have been made aware of that.

S/Sgt. Stewart stepped forward into a difficult situation, without the support he ought to have had from the group of commissioned officers who for months had been in the forefront of preparing for the events of this important day.

In addition, the conduct of members of the RCMP that led to the use of pepper spray on this occasion was not appropriate to the circumstances. While S/Sgt. Stewart was the officer on the firing line who first used the pepper spray, followed immediately by Sgt. Mercer, there were others who put them in that position and they must bear major responsibility for this regrettable incident.

28.2. Lack of Communication

When asked whether he had recognized Cpl. Flamank at the site, S/Sgt. Stewart replied: "I don't know Corporal Dave Flamank." And yet he was a Zone Commander in the area S/Sgt. Stewart was entering. Cpl. Flamank had been at Gate 6 long enough to have formed an impression of the protesters that was very different than had been communicated to S/Sgt. Stewart back at Gate 3.

Insp. Killaly did have a brief conversation with S/Sgt. Stewart on his arrival, in which he basically repeated the instructions S/Sgt. Stewart had already received from Insp. Dingwall - that the road was to be cleared immediately. They did not discuss the method to be used. Insp. Killaly said he trusted S/Sgt. Stewart's "judgment and skill that he would go up there and clear it."

Insp. Killaly knew nothing of Command Centre assuming control of the operation. It was his belief that Supt. Thompsett had remained in command throughout and that he, Insp. Killaly, was effectively the commanding officer at that spot. He had gone to Gate 6 on instructions given to him by Supt. Thompsett prior to Supt. Thompsett having been relieved of his command. As a result of a call from Supt. Thompsett, Insp. Killaly said he came to realize that Gate 6 could be used as an exit route for the leaders but he acknowledged that he was not briefed that day on what exit route had been originally planned.

In their closing written submission, Commission Counsel correctly summarized evidence of Insp. Ryan and Acting Sgt. Jay Quinlan on the subject of the communication among offices on the scene that might have been expected:

> Insp. Ryan testified that it would have been prudent police practice for S/Sgt. Stewart to have spoken to the QR Team leaders already present at Gate 6 upon his arrival, regardless of any information S/Sgt. Stewart might have already possessed. A/Sgt. Quinlan testified that, if protesters had communicated to police that they were there to be peaceful and would be passively resistant, it would be standard and prudent police practice for the officer in charge of that area to notify the incoming police Unit if it was relevant. The officer already at the event should approach the incoming officer.

Chief Supt. French agreed and said that the officers already at the scene should have briefed the incoming officers.

I believe it was a very serious error that, at the time of his arrival, there was no discussion between S/Sgt. Stewart and the officers at the site regarding what he was facing in terms of the conduct and intentions of the protesters. I am satisfied that S/Sgt. Stewart arrived with the intention of opening the road with the use of pepper spray if he did not get an immediate and positive response to the police presence and his firm, forceful and decisive directive to the protesters to clear the roadway.

He should have been made aware of what Mr. Brooks had told Cst. Potvin and what she and other officers heard Mr. Brooks say to the protesters. Likewise, the mood and behaviour of the protesters, as assessed by many officers including Insp. Killaly and Cpl. Flamank, should have been communicated to S/Sgt. Stewart. Had he become aware of the assessment of the crowd by officers Potvin, Killaly, Flamank and others he might have abandoned his belief in the "resistive nature" of the protesters. Had that occurred, his approach to dealing with them and opening the road may well have significantly changed - as it ought to have done.

The conduct of the RCMP members that allowed the serious error that I have identified to occur was not appropriate to the circumstances.

I view this very serious breakdown in communications as part of an afternoon of overall confusion which had its roots in the ill-suited planning structure put in place for the APEC conference and the manner in which that structure was administered by those holding planning responsibility. At that very critical time, there was nobody at Gate 6 with leadership responsibility who had any in-depth knowledge of the arrangements for the leaders' meeting that had been in the planning process for most of the previous two years.

28.2.1. How the Pepper Spray was Used

The manner in which the spray was dispersed was criticised by the complainants. Complainants' counsel stated:

> The method of OC deployment contravened established protocol. It should have been fired in short one-second bursts, and at distances no closer than fifteen feet, to avoid eye damage from the container's pressurized contents.

S/Sgt. Stewart explained what he did:

> Q: So do you recall then, dispersing the OC?
>
> A: Yes, I did. I dispersed it in a serpentine pattern.
>
> Q What's the significance of a serpentine pattern?
>
> A: It's one of the three that I teach. That's one of the three methods of dispersing OC, to ensure that the persons that you--the direction of the aerosol, and the aerosol is delivered to the area where you want it delivered, sufficiently so that it works.
>
> Q: And what--what area, as you're standing there, what area was it that you wanted to spray into?
>
> A: The persons on the ground and the persons moving down.

S/Sgt. Stewart he sprayed for one second, which resulted in the release of 75 millilitres of OC spray in solution which he said would be about three ounces or slightly less than half a cup. He said it is very difficult to release spray for a period of less than one second.

Sgt. Mercer explained what he did:

> Q: And who were you directing your spray at?
>
> A: No one in general, I'm just over the heads of the seated crowd, in--just in a sweeping motion.
>
> Q All right. And what was the goal that you were trying to achieve by doing that?
>
> A: Making that intersection an uncomfortable place to be and so that the crowd would move off.

Sgt. Mercer said he was perhaps 10 feet from the nearest protester at the time. He said he did not direct the spray at any individual and nobody was hit point-blank by his spraying. It dispersed a volume of spray that went over their heads and filtered down.

Sgt. McLaren did not see the start of the spraying because he had turned his back on S/Sgt. Stewart and was reaching down to a man seated on the road and asking him to move. It was then that S/Sgt. Stewart and then Sgt. Mercer released their spray. He said that some who had been sitting moved off towards University Boulevard and some were just standing there - some at the intersection and some on the Boulevard. He said that 20 of them were standing in front of him and he pepper sprayed in their direction. He said his purpose was to cover the area in front of them with a cloud of spray that would discourage them from coming back into the intersection.

Sgt. McLaren said the people then turned and headed up University Boulevard. S/Sgt. Stewart told him that that was enough spray to dispense.

Expert witness Sgt. Douglas Ashton viewed the many videotapes of the spraying and studied what had occurred. After viewing the scene on video in slow motion, frame by frame, he was asked to comment on the actual deployment of pepper spray by S/Sgt. Stewart and Sgt. Mercer. I believe that he arrived at a well-reasoned assessment and I accept his explanation of the events:

> Q: Now you see the motion--
>
> A: Yes.

Q: --of Staff Sergeant Stewart's deployment method; can you comment on that?

A: Yes. It appears to me that the--the use of the OC here is in an indirect manner and it's covering a large area, so that--now I can't see who is actually in front or where the individuals happen to be and there may be some direct application there. I'm--I'm not too sure about that, but the motion of the--of the OC is covering a large area so it's going to be doing a couple of things. First off, it's going to be creating a cross-contaminated environment that's going to be causing respiratory effects that are going to be there. The other thing, there is a potential that a person could be directly contaminated with this because they just may be in a spot and end up being directly hit with the OC in the eyes and we can see effects there. ...

. . . .

Q: Now, assume for a moment that there are seated in front of Staff Sergeant Stewart, several protestors.

A: Yes.

Q: And it's hard to gauge the distance, but you can guess they're-- they're not far from him--

A: Yes.

Q: --according--just assume that for a moment. And his deployment method that you just commented upon, at that range, is that deployment of a Mark 46 canister in accordance with prudent and standard practice for crowd dispersal techniques when you've got subjects that are seated fairly close in front of you?

A: A direct application in that particular case--and, again, I don't know the exact distance that exists here, but a direct application would be of concern because of the volume of the unit, the pressurization of that particular unit, whereas an indirect application would be a reasonable type of usage. And that would be to the--the ground, clothing and air that I had described earlier.

Q: And does that comment apply in situations where you're assuming as well that a fairly large number of the crowd is actually compliant as opposed to resistant?

A: Well, the OC is going to be used for two purposes here. One is to deal with the core resistant group that exists in front of Staff Sergeant Stewart. The other is going to be to create an environment that is cross-contaminated in which individuals are not going to want to reoccupy that particular area, as well as the psychological impact that it's going to have that the group would not want to reoccupy that because of the potential of being OC'ed.

Sgt. Ashton then commented on Sgt. Mercer's deployment methods:

> The--the OC that is being utilized here, I'm not too sure--whether it is a direct application or an indirect application of the OC here. My understanding is that the OC is being deployed for the purposes of once again creating a cross-contaminated environment and to, you know, move individuals and prevent them from coming back

> into that particular area, which would be, you know, a reasonable course of action under those circumstances.

Finally, Sgt. Ashton expressed his view of the spray released by Sgt. McLaren:

> Well this seems to be another in--indirect application of the OC to, you know, create a cross-contaminated environment and particular to the left side as the officers are facing the intersection that they are dealing with. And the OC has a large quantity obviously that is coming out here to be suspended into the air and to be carried and used in this manner. As well, I would expect that we're dealing with a psychological impact on the crowd, as well, here.

Acting Sgt. Quinlan said that the manufacturer of the Mark 46 canister recommended a minimum distance of 12 feet for using it directly to the eyes. He said that did not mean that it cannot be used from a distance of less than 12 feet if the circumstances render it necessary and if the officer perceives that it is necessary to use force at that time.

Acting Sgt. Quinlan commented on S/Sgt. Stewart's serpentine spraying method:

> Q: All right. And I'm just going to play you the videotape a bit further and I'm going to ask you to pay particular note to a sequence of--or series of frames after the video camera itself has received some form of fluid on the lens.
>
> A: That--that--that spraying action there is consistent with a crowd control motion of using that type of unit. In--in a serpentine fashion, where the spray is used in an up and down sweeping motion, with not an intention of direction contamination, but an intention of contaminating an area as opposed to individuals.

I have no doubt but that the extensive spraying received by Ms. Neyedli before she left the roadway in front of the police line, and by Mr. Wolinetz while he remained seated on the road, came from S/Sgt. Stewart's canister. This is consistent with S/Sgt. Ashton's evidence. I have no doubt at all that, in spite of S/Sgt. Stewart's indirect spraying, Ms. Neyedli and Mr. Wolinetz received a direct application of pepper spray. So did CBC cameraman Rob Douglas, who was operating the camera that took the video played to Acting Sgt. Quinlan and which, as counsel noted, "received some form of fluid on the lens." Sgt. Mercer established that, when he used his canister, he was perhaps 10 feet from the nearest protester. I believe it is likely that S/Sgt. Stewart could have been even closer given the results.

I accept Sgt. Ashton's evidence that officers Mercer and McLaren used their spray not directly at protesters but to produce a contaminated environment that would move them along and prevent them from returning to the area that had been sprayed.

The manner of spraying was likely not a textbook example of correctness. I have found that direct application of pepper spray occurred and that the distance involved likely did not conform with recommended procedure. Nevertheless, considering the circumstances under which the spraying occurred, I do not find any inappropriate conduct in the manner in which the spray was dispersed.

28.2.2. Cameraman Sprayed

Mr. Douglas was close to the front line of the protesters, trying to capture the events of the day on his camera. He was sprayed in the face by S/Sgt. Stewart's canister. Mr. Douglas explained that he thought S/Sgt. Stewart's directive to the protesters did not apply to him:

> Q: Okay. Why didn't you get off the road, when the instruction was given?
>
> A: I didn't think that he was going to use any kind of force at all.
>
> Q: But, in fact, he said just that, didn't he? That I--
>
> A: To the students--
>
> Q: I'm sorry?
>
> A: To the students, not to me.
>
> Q: But, sir, do you think that when you're in that situation, right among the protestors, that your situation is notably different from the protestors?
>
> A: Yes, I do. I do.
>
> Q: But wasn't it clear to you, that the object of the exercise, from the Police perspective, was to clear people off of the road?
>
> A: The students.
>
> Q: Well, but he didn't say, this is for students, did he?
>
> A: No. But, my assumption was, I continue doing my job, this is the way we work with the Police forces, many times, until instructed that I have to vacate the area, to me personally--

Q: So--

A: --I didn't get that instruction. I assumed he was talking to the students and I continued to shoot. No one said to me personally, you better get out of here. Nothing like that.

Q: So is it your view, that in order for that instruction to have application to you, Stewart must say to you, you cameraman, get off the road? I'm speaking to you as well as the other persons on the road?

A: If you view the videotape, you'll see later on that, in fact, he does say that to another cameraman on another videotape. So, yes, that's my assumption.

Q: And that was the assumption that caused you to conduct yourself, as you did there?

A: Yes.

In any event, Mr. Douglas was not singled out for special attention by S/Sgt. Stewart.

Mr. Douglas was definite that S/Sgt. Stewart had made eye contact with him and then sprayed him. S/Sgt. Stewart had no recollection of seeing Mr. Douglas at the scene until after the spraying. I believe they were both telling it as they believed it to be. Unquestionably, Mr. Douglas was there for S/Sgt. Stewart to see. I have no doubt that S/Sgt. Stewart's eyes passed over those of Mr. Douglas as he delivered his message and then pressed the lever. As I have said previously, S/Sgt. Stewart was a man under stress and I have no difficulty at all in accepting the fact that he has no recollection of the presence of Mr. Douglas amongst the students, even though he was attired in a bright red jacket. Mr. Douglas was fixed on S/Sgt. Stewart. S/Sgt. Stewart was fixed on many. I accept S/Sgt. Stewart's evidence that he did not intentionally target Mr. Douglas with his spray.

Mr. Douglas was well looked after as far as decontamination was concerned. He had continued to shoot the events until the pain overwhelmed him. A police officer gave him water for his eyes. When that ran out, Mr. Douglas' soundman took him to some students who provided more water. He again exhausted the supply but at that point Cst. Fulks, the RCMP paramedic on site, gave him saline solution for his eyes. Soon after that, an ambulance arrived and the paramedic attendants pumped saline into his eyes. He said he was out of commission for 16 minutes or so but was able to get back on the job in time to shoot some of the motorcades going by.

S/Sgt. Stewart gave evidence about the apologies he made to Mr. Douglas while Mr. Douglas was undergoing treatment:

> Q: Tell the Commissioner, please, what you can of your dealings with Mr. Douglas subsequent to the spray incident?
>
> A: I apologized twice to Mr. Douglas. I apologized to Mr. Douglas when he was on the east side of the roadway, and being treated by Constable J. Fulks, who was administering first aid. Later--
>
> Q: Let me just ask: Was Fulks present, to your knowledge, when you--you spoke the words?
>
> A: Yes, he was.
>
> Q: All right. Go ahead.
>
> A: Sometime later, after Mr. Douglas had been dealt with by the bicycle medics and after he had been dealt with by the Ambulance crew in the Emergency Health Services Ambulance, he was seated on the back of the Ambulance, the doors were open, and I went over and apologized to him there.
>
> Q: Do you recall what you said?
>
> A: I said, 'I'm sorry, it shouldn't have happened and I apologize'. He advised me that it was not - I can't remember the exact words - but it was part of the job, essentially. And I advised him that I didn't think it was and offered to buy him lunch.

Mr. Douglas said that he did not recall seeing S/Sgt. Stewart until after the motorcades went by. He recalled nothing of the two visits that S/Sgt. Stewart said he made to him. I believe Mr. Douglas when he said he had no recollection of the visits. He acknowledged:

> It was very chaotic, there were dogs, bullhorns screaming. If Mr. Stewart apologized, I didn't hear his apology, but I think I would have remembered a conversation like that but I--I honestly just don't recall that at all.

After questioning S/Sgt. Stewart at some length about the apologies, Complainants' counsel challenged him further:

> Q: Sir, I put it to you that those two incidents did not happen. That you did not apologize to Mr. Douglas; do you agree?

A: Sir, I am emphatic in my testimony. I recall it specifically. I did, and as I say, there are witnesses and I urge you to seek those witnesses out and speak to them. And I'm sure that will put your mind at rest.

Q: I suggest to you, sir, that you have made that up, in order to make yourself look better; do you agree?

A: No.

Mr. Jeffrey Watts, one of the paramedics with the B.C. Ambulance Service who treated Mr. Douglas, gave the evidence on the subject:

Q: All right. So this was your last treatment of somebody from pepper spray of the day, is that what--

A: That's as far as I remember, yeah.

Q: All right. And what happened then?

A: Well I--I was getting him cleaned up and an RCMP Officer came up on my left side and started to talk to--to my patient. He said something along the lines of I'm sorry, I didn't see you standing there. The patient responded with something like it's a hazard of the job, and the RCMP Officer then said, no I--I mean it, I'm sorry, I want to buy you lunch when this is all over. And the reason I remember it, is I was about to make a stupid comment of, oh good, am I included too. And I bit my tongue and--and didn't say it.

Q: All right. Do you recall any further conversation between them?

A: No, not at that point. When I finished the gentleman got up and picked up his camera and seemed to go back to work.

Q: Okay.

A: There was a lot of other activity going on, he seemed anxious to get back to using his camera.

Q: All right. And prior to this event, where--had you seen either of these individuals before?

A: No.

Q: And since, have you met any of them, either of them?

A: No.

Q: All right. I take it you've subsequently come to know the--the RCMP officers that you've described. Where do you--where do you--do you now recognize him from somewhere?

Q: I've seen him on TV, identified as Staff Sergeant Stewart.

I am satisfied without any doubt that S/Sgt. Stewart extended the two apologies to Mr. Douglas. Counsel for S/Sgt. Stewart asked that I conclude that his client expressed a real and meaningful apology to Mr. Douglas. I have absolutely no hesitation in so concluding. The suggestion put to S/Sgt. Stewart to the contrary was understandably offensive to a decent man.

28.3. Moving up University Boulevard

The police moved the protesters up University Boulevard under the direction of Sgt. McLaren. As this was happening, Sgt. McLaren concluded that a small crowd to his left was working its way back down towards Northwest Marine Drive so he released what he described as a big cloud of spray that would prevent those people from coming through. He said that there were no protesters in the area at the time and that, with the cloud there, the protesters never came any further forward.

Sgt. McLaren then yelled at the officers to form a line across University Boulevard and he directed some of the officers to cover off the flanks on either side, although on the left side the Place Vanier fence formed a natural barrier. Cpl. Stanley Szelagiewicz estimated that the line was formed about 100 feet up University Boulevard from where it intersected with Marine Drive. With the police line formed in the stationary position, the protesters ceased their forced retreat and stood and faced the police line. That was a reasonable decision for the protesters to make and exactly what one would have expected them to do in the circumstances. There was no reason for them to believe that the police required them to move any further up University Boulevard. Sgt. McLaren said that he considered the police line he had created as temporary and that he intended to move it still further up University Boulevard because, if something were to happen, the police would have more time to react if the crowd was further away from the intersection through which the motorcades were to pass. Before he gave any further direction or made any additional move, however, S/Sgt. Stewart took over command of the line.

Insp. Killaly told S/Sgt. Stewart that he wanted the line moved further up University Boulevard to the gate at a construction area where a maintenance project was located. Insp. Killaly believed that the crowd of protesters might grow and that the police would be in a better position if there was more space between their line and the intersection with Northwest Marine Drive. Some stones from the construction site and some mud had been thrown in the direction of the police line.

Before S/Sgt. Stewart gave the order to move the line back still further, he saw Mr. Brooks facing the protesters, his back to the police, talking to the protesters through his megaphone. S/Sgt. Stewart then moved at a fast pace through the police line, through the open area between the police line and the protesters and, with his arms, encircled Mr. Brooks from the rear, marched him back to the police line and passed him off to other officers who took him to the ground and handcuffed him. As S/Sgt. Stewart carried out this arrest, the same pepper spray canister that he had employed moments before discharged and sprayed Mr. Brooks in the face, on the side of his head, on his chest and on the upper portion of his body. S/Sgt. Stewart said that the discharge was accidental and happened because he was holding the canister at the same time that he made the arrest. I accept that explanation.

28.3.1. Mr. Brooks' Arrest

I believe Mr. Brooks who said he repeatedly told the officers who held him in custody: "I'm not resisting arrest." I believe that because, from observing Mr. Brooks on the witness stand and from watching and listening to the videotapes of him speaking at the intersection just before S/Sgt. Stewart arrived and also just before his arrest, I have concluded that Mr. Brooks is a very, very mild mannered man who did not intend to either cause or participate in any acts of violence.

This raises the question: why was he arrested and taken into custody?

Cpl. Stanley Szelagiewicz recalled that people were chanting and waving placards and one male was using a megaphone. That was Mr. Brooks. Cpl. Szelagiewicz gave evidence about Mr. Brooks' arrest:

> Q: You've referred to seeing a fellow with a megaphone, who we know was subsequently arrested; did you witness that?
>
> A: Yes, I believe it was Staff Sergeant Stewart that arrested him.
>
> Q: Where were you when that occurred?
>
> A: I would have been in the front ranks still.
>
> Q: And did--did you know that was coming, did Staff Sergeant Stewart say anything about arresting this fellow, or did it just occur?
>
> A: I--I don't recall him saying anything, that I overheard anyway.
>
> Q: All right. From what you observed, could you--could you--was there something in particular that this fellow with the megaphone did, that appeared to you to relate to his arrest?
>
> A: Nothing that I observed personally. I--he was moving around quite extensively throughout the crowd and he was fairly close in front of our ranks at one point in time. But the reasons why, no I--I didn't observe any.

Cpl. Szelagiewicz clearly did not know why the arrest occurred.

Bruce Walkinshaw was a student at Langara College. After attending morning classes, he took an afternoon bus to UBC to join the demonstrations. He had been at the intersection when Mr. Brooks had spoken before the road was cleared and he was with the protesters addressed by Mr. Brooks on University Boulevard. He said that, on the first occasion, Mr. Brooks had made it clear that the police were not the enemy and that they were not the reason for the protest. He said that on neither occasion did Mr. Brooks speak aggressively and he found what he said to be very logical and sensible. Mr. Walkinshaw was at a loss to explain Mr. Brooks' arrest. He said that Mr. Brooks was not doing anything and, at the time, he thought to himself: "why did they grab him?"

Ms. Hunter was also with the protesters facing the police line. She said that when S/Sgt. Stewart came through the line and grabbed Mr. Brooks around the chest, Mr. Brooks was talking on his megaphone, emphasizing that the protesters were there for peaceful protest and that there was no need for pepper spray as there was no intention of being violent. Mr. West described what he saw and heard immediately before Mr. Brooks' arrest:

> And the police stopped and formed a line there. And Mark, at this time, was yelling through the megaphone for everybody to stop to turn around, to not let them sort of scare us away, that this was our space. And he said, everybody stop, turn around. I think if he could have, he would have tried to get everybody to sit down. I don't think anyone was in a mood to be that hard to move. And he stopped everybody and we turned around and we faced the police and we started chanting again. And Mark kept talking through the megaphone saying things to the effect of, We didn't provoke this attack, everybody remain calm and peaceful but stand your ground.

Mr. Brooks described his experience:

> Q: Did you still have your megaphone?
>
> A: I did have the megaphone, yeah. And so at that stage, again people were justifiably angry, upset. They'd been hurt. They'd seen their friends assaulted. And it was potentially very volatile, and I felt that I had some responsibility, because I had the megaphone still. So I felt that I had to do something, and--
>
> Q: What did you do?
>
> A: I tried to--to make the situation--I tried to calm everybody down, basically. I didn't want the situation to get any worse than it already was.
>
> Q: So how did you try to calm everything down?
>
> A: I said that let's not make this any worse than it already is. This is not our fault. We did not provoke this. The police are totally responsible for what just took place. Let's not respond. Let's continue to be peaceful. Let's continue to be non-violent. Those kind of themes, I'm paraphrasing, but I remember clearly that that was the gist of what I was saying.
>
> Q: And what happened next?
>
> A: Again, there was a line of police that were across the road on University, and then there were the protestors a few yards facing them further up University. I had the megaphone at that point, so I went to the front and then I walked back and forth in front of the police, facing the protestors, not facing the police, not directing any comments toward them. Talking to protestors, saying, let's calm down, let's not let this get out of control. This is not our fault. We didn't do anything wrong. And then all I remember is being grabbed from behind, wrestled to the ground and pepper sprayed. I estimated that I had two or three officers on me at that time.

While the audio reception on many of the videos was of poor quality, Mr. Brooks was captured on one of them speaking to the protesters over his megaphone at this time and place in a manner consistent with his evidence. He was recorded as saying:

> Take it easy. We don't want it to get any more out of hand. We were totally peaceful. We did nothing to provoke this.

I believe and accept the evidence just referred to as given by Cpl. Szelagiewicz, Mr. Walkinshaw, Ms. Hunter, Mr. West and Mr. Brooks.

I listened carefully to the explanation given by S/Sgt. Stewart for arresting Mr. Brooks. I have read and re-read the transcript of his evidence a number of times. Based on the relevant portions of that transcript, I have concluded that S/Sgt. Stewart knew nothing of Mr. Brooks' manner, nor of the nature of the message Mr. Brooks was communicating over the megaphone to the protesters. Rather, with megaphone in hand, Mr. Brooks was seen by S/Sgt. Stewart as the leader of the pack, rallying the crowd, and S/Sgt. Stewart "was concerned that something may occur from that," that is to say, from his "rallying the crowd." The portions of S/Sgt. Stewart's evidence on the basis of which I reach these conclusions are as follows:

Q: Now, what did you know about the person in 1:51:44:13 before you evidently grabbed a hold of him?

A: I knew that he was rallying the crowd. I knew that I had been just ordered to move the crowd back further down the road by Inspector Killaly. I knew that they had stopped there on their own and that he, as a--was rallying them at that point.

Q: Well, what do you mean by "rallying them?". Rallying them to do something that's contrary to law or rallying them to move back or what was he rallying them to do?

A: He certainly wasn't rallying them to move back at all, sir.

Q: Well, did you hear the words that he was uttering?

A: I heard the words but I don't recall them.

Q: I see. Well, what was the nature of the words, do you remember that?

A: I don't know the specific words but I know that my sense of my hearing those words were that the crowd had stopped here; that we were required to move them back farther down the road and that he was leading them there and holding them there.

. . . .

Q: Well now, did you cause this person in the picture, in your arms, to be arrested?

A: I physically arrested him, yes, sir.

Q: And what was the offence that you were arresting him for?

A: My personal view was he was continuing to obstruct us and continuing to block the roadway.

. . . .

I moved through the crowd, or through the line of Members, I had been advancing, heard a person speaking on a bull horn, in my mind, rallying the group. And the bull horns had, as with other disturbances that I have attended, are--you might call them a badge of generalship, they're used to--by the persons that are in charge, the organizers. And as such, I felt it appropriate to arrest Mark Brooks, which I did and passed him back through the Police line.

. . . .

Q: And what do you consider his offence to have been?

A: Obstruction.

Q: Is that because you understood his words to be some actually exhorting the crowd to an unlawful action or was it simply that by being in a leadership role at all, at that point in time and at that place, that he was, by definition, committing obstruction?

A: It had nothing to do with the simple fact that he was in a leadership role. Simply being in a leadership role would not, in my mind, constitute causing persons to rally, as that's how I saw it. And I felt that he would continue to do that--

Q: Yes?

A: --and that he would cause a further breach of the peace and I, therefore, arrested him.

Q: Am I right in recalling that the crowd was moving away from the police line at the time you arrested him?

A: No, sir, you're not. The crowd was stationary.

Q: They--they were stationary?

A: Yes, sir.

Q: All right. And, again I can't recall from your testimony, was there--what was it specifically, you understood him to be saying?

A: I don't recall and I wasn't able to recall earlier the specific words. But my understanding was, as to the best of my recollection, that he was holding the crowd,

> that he was, in other words, rallying the crowd and I was concerned that something may occur from that.
>
> Q: Yes.
>
> A: It was a very angry group of people and it may well have been justified that they were angry in some ways in their own minds, but I felt that some definitive action had to be taken.

The essence of S/Sgt. Stewart's concern was that he was under orders to move the crowd further up the road and that, because Mr. Brooks was "rallying the crowd," he was an impediment to S/Sgt. Stewart achieving his objective.

After Mr. Brooks' arrest, the protesters were moved up the road by S/Sgt. Stewart in accordance with Insp. Killaly's instructions and they were held at a point S/Sgt. Stewart estimated to be about 200 feet from the intersection. Police and the protesters remained there until the motorcades had passed.

28.3.2. Was Mr. Brooks' Arrest Appropriate?

The determination of the appropriateness of the arrest of Mr. Brooks requires a consideration of whether it was lawfully made.

28.3.2.1. Breach of the peace

S/Sgt. Stewart's testimony suggests that the basis for the arrest was his perception that, largely due to Mr. Brooks' efforts, the protesters were obstructing the police in the execution of their duty, and that Mr. Brooks might cause a "further breach of the peace." Counsel for S/Sgt. Stewart set out his position as follows:

> S/Sgt. Stewart has testified that he believed that Mr. Brooks was the leader of the protesters at that point (it will be recalled that S/Sgt. Stewart testified that he had observed Mr. Brooks organizing and directing protesters at the earlier incident, the noon rally at the Rose Garden) and that Mr. Brooks was directing the protesters to effectively resist the police. Significantly, Mr. Rob West, a complainant in these proceedings and one of the witnesses to the event (he was in the protest group), recalls that he heard Mr. Brooks tell everyone to stop, turn around and not let the police scare them away . . . . *In the circumstances, S/Sgt. Stewart concluded that these protestors were breaching the peace and thus were in circumstances where an arrest was lawful.* He interpreted Mr. Brooks' role as the tactical leader of that event and saw his actions as directing or encouraging the protestors to continue that

> breach; he elected to immediately arrest him. He did this by approaching Mr. Brooks, taking hold of him with his arms and turning and handing him off to police members on the line. Mr. Brooks was subsequently handcuffed and placed in a police wagon and taken to jail. Given the high state of tension and anxiety of the situation, and given that, for example, one of the protestors perceived Mr. Brooks to be directing that they should hold their position, it was not unreasonable for S/Sgt. Stewart to conclude and act as he did. (emphasis mine)

Given counsel's position that S/Sgt. Stewart believed the protesters were breaching the peace, brief analysis of that concept will be useful, as there is a "public and, to a large degree, police misconception of what constitutes a breach of the peace giving a right to arrest at common law": *R. v. Lefebvre* (1982), 1 C.C.C. (3d) 241 (B.C.C.A), aff'd (1984), 15 C.C.C. (3d) 503 (B.C.C.A.).

A breach of the peace is an act that results in actual or threatened harm to someone, and often involves a violent disruption or disturbance of public tranquillity, peace and order: *Brown*, cited above; *R. v. S.S.* [1999] N. J. No. 230. It does not arise simply because a person is being belligerent, loud and uncooperative with the police: *R. v. Januska* (1996), 106 C.C.C. (3d) 183 (Ont. Gen. Div.). Nor does the power to arrest for breach of the peace afford policy officers "some sort of roving commission to arrest all those whom they think they should arrest": *R. v. Khatchadorian* (1998), 127 C.C.C. (3d) 565 (B.C.C.A.).

Breach of the peace is a common law offence, not an offence under the *Criminal Code*. However, the policy have the power to arrest for breach of the peace under both the *Criminal Code* and the common law.

- Section 31(1) of the *Criminal Code* authorizes a peace officer to arrest any person he "finds committing a breach of the peace, or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace."
- At common law, an officer has the power to arrest without warrant in order to prevent a breach of the peace that he or she reasonably apprehends will occur in the immediate future: *Hayes* (see Chapter 20).

Although breaching the peace is not an offence under the *Criminal Code*, section 129 of the *Criminal Code* makes it an offence to wilfully obstruct a police officer in the execution of his or her duty. As one of the primary duties of the police is to preserve the peace, a deliberate effort to prevent the police from containing a breach of the peace falls within section 129 of the *Criminal Code*.

As noted, S/Sgt. Stewart said that Mr. Brooks was "rallying the crowd" and that he arrested him for "obstruction" and to prevent him from inciting a "further breach of the peace".

28.3.2.2. No statutory power to arrest for breach of the peace

I do not believe that S/Sgt. Stewart was entitled to arrest Mr. Brooks under section 31(1) of the *Criminal Code*. To begin with, S/Sgt. Stewart did not witness either Mr. Brooks or the other protesters committing a breach of the peace. After the RCMP formed their stationary line, all the protesters did was stop on the roadway, face the police and resume chanting and waving their placards. They were perfectly entitled to do that, and there was no reasonable basis for concluding that they were breaching the peace in so doing. Although there was some evidence that a few protesters had thrown some small stones and mud in the direction of the police, I do not believe that was of much significance or a real concern to the RCMP because of the minimal nature of it. Furthermore, as neither Mr. Brooks nor the other protesters had previously committed a breach of the peace, and none was then in progress, there was simply no breach of the peace for Mr. Brooks to "join in or renew" for the purposes of section 31(1). Therefore, S/Sgt. Stewart was not authorized to arrest Mr. Brooks pursuant to s. 31(1).

28.3.2.3. No common law power to arrest for breach of the peace

S/Sgt. Stewart was not entitled to arrest Mr. Brooks on the basis of the common law power to prevent a reasonably apprehended breach of the peace. The legal test is whether

S/Sgt. Stewart honestly and reasonably believed that there was a "real risk of imminent harm." I will allow S/Sgt. Stewart the honest belief that a breach of the peace was imminent but I am not prepared to conclude that his belief was reasonable or that there was a risk of imminent harm. This was a peaceful protest with a law-abiding man at the helm.

The protesters had conducted themselves peacefully at Gate 6. It was S/Sgt. Stewart who decided to use force without proper warning. Despite that inappropriate use of force, the protesters generally complied with the RCMP efforts to move up University Boulevard. Once the RCMP formed a stationary line across University Boulevard, it was entirely reasonable for the protesters to assume that they were not required to move back any further. After the protesters stopped their retreat and faced the police line, they did nothing other than chant and wave signs. Even if Mr. Brooks was partly responsible for causing the protesters to stop their retreat, there was no basis to conclude that he was exhorting them to do anything other than resume their peaceful protest.

S/Sgt. Stewart's conclusion that "something could occur" from the fact that Mr. Brooks was rallying the crowd was highly speculative and unreasonable in the circumstances. There was no "real risk of imminent harm".

I conclude that S/Sgt. Stewart was not authorized to arrest Mr. Brooks on the basis of the common law power to arrest in order to prevent a reasonably apprehended breach of the peace.

28.3.2.4. No grounds to arrest for obstruction

S/Sgt. Stewart did not have reasonable grounds to arrest Mr. Brooks for obstruction of police. The protesters had continued to move up University Boulevard until the RCMP stopped and formed a stationary line. It is true that S/Sgt. Stewart had been ordered by Insp. Killaly to move the protesters a further 100 feet up University Boulevard and he had a duty to comply with that order, but the protesters did not know that. Had S/Sgt. Stewart told Mr. Brooks and the other protesters of his duty to move them up the road, and had they refused to comply, that would have been quite another matter.

In the circumstances, Mr. Brooks could not possibly have intended to obstruct S/Sgt. Stewart in the execution of his duty. The arrest of Mr. Brooks by S/Sgt. Stewart was not appropriate to the circumstances.

S/Sgt. Stewart should have made an effort, before arresting Mr. Brooks, to advise the crowd that he had a duty to clear the road and that any efforts to prevent him from fulfilling that duty might result in arrest for obstruction.

It would be prudent practice for police officers, wherever feasible, to make every attempt to advise protesters, before making an arrest, that the police have a duty to move the protesters and that any attempt to prevent the police from fulfilling that duty may result in an arrest for obstruction. That way, the officer would not be in the position of arresting for a "common law offence," which cannot lead to a charge, and troublesome debates over whether a breach of the peace actually existed might be avoided.

28.3.2.5. Arrest was not appropriate

Having considered the statutory and common law bases for the arrest of Mr. Brooks, I conclude that the arrest of Mr. Brooks was not lawful and, therefore, was not appropriate to the circumstances.

28.4. Quick Response Teams

It is appropriate to make reference to the Quick Response Teams that were in action on campus throughout the day under the direction of S/Sgt. Stewart. He had brought two of the teams with him to Gate 6 and another of them was already there.

Members of the Quick Response Teams received a few hours' instruction on matters such as crowd control, pain and compliance holds, use of collapsible stretchers, and passive resistance techniques. However, the teams never trained together.

That is somewhat surprising, given the important role the teams were called on to play on November 25. Their responsibility was to respond quickly as backup, sometimes on an emergency basis, to problem incidents, such as demonstrations. Indeed, they were summoned to all of the "hot spots" as they developed on campus that day. Their role was a significant one. S/Sgt. Stewart summarized the reason for their existence: "to assist with problems that presented themselves that were not normally planned for."

Cst. Kinsey was a member of the North Vancouver Detachment. He said he was informed in October that he would be a Quick Response Team member. His first involvement with his assignment was in the week before APEC. He said that at the Quick Response Team headquarters in the Beatty Street Armouries, those without training in the use of pepper spray and the ASP baton were given the opportunity of training in those areas. He said:

> And that was the only training we had other than every day before we were given our tasks for that day, we were briefed - and plans were set as to how we were going to deal with certain incidents, but that was it.

Insp. Ryan said that he would have expected the QRT members to have spent some time training together. He would have expected that there would have been some focus on defensive tactical training, enhanced command training and enhanced formations training so that everyone would clearly understand their positions and roles and have an opportunity to familiarize themselves with their colleagues from different jurisdictions.

That did not occur in this instance. The Quick Response Teams were not assembled until the week before the APEC conference. A/Comm. Wawryk explained that the teams are *ad hoc* units formed before a major event with less opportunity to train than tactical troops. Nevertheless, S/Sgt. Stewart said each Team Leader and each Assistant Team Leader was selected because of a sound basic background in tactical experience.

S/Sgt. Stewart said that 50% of the remainder of the RCMP officers comprising the Quick Response Teams had had tactical troop training, although he acknowledged that the teams had never had an opportunity to train together for any length of time. Acting Sgt. Quinlan said that a group of officers who had not trained together would take longer to accomplish their goal than would a group that had trained together in the manner outlined by Insp. Ryan.

28.5. Decontamination

I now turn to the inadequate decontamination treatment afforded to Mr. Wolinetz, Mr. Bailey and Mr. Brooks. One of the few areas of unanimity between all participants - witnesses and counsel alike - was the existence and extent of that inadequacy.

There is also no dispute that responsibility for that inadequacy rests with the RCMP. Counsel for S/Sgt. Stewart and Sgt. McLaren was correct in his assessment:

> There is no question that decontamination measures are part of the responsibility that accompanies the use of OC spray. . . . In circumstances where affected persons were in the custody of the RCMP . . . there is a positive responsibility upon members of the Force to ensure that appropriate decontamination measures are taken.

The evidence of the three arrestees and the van driver, then Cst. and now retired, Alan Homeniuk, satisfies me beyond doubt that appropriate decontamination measures were not taken.

All three of the arrestees were placed in the van soon after they were arrested and handcuffed behind their backs. Only Mr. Bailey received any decontamination assistance before that. He said that while he was up against a tree someone, who, because of his bike helmet and yellow jacket he believes was an officer with the VPD Bike Squad, came along and poured a little bit of water into his eyes for a few seconds. He said the minimal amount of water was not really helpful to him.

The van was a closed unit during the time that the three men and one other prisoner sat in it. Mr. Wolinetz was the first one in. The others followed within minutes. Except for one small movement forward the van remained stationary for close to an hour and until all the motorcades had passed. Mr. Wolinetz described his condition:

> I was in extreme pain--I was soaked head to toe in the pepper spray; it was honestly one of the worst experiences of my life. I have been hurt playing numerous sports, I've broken bones, I've just recently had a major operation and none of it comes close to comparing to the--to the way the spray felt. My eyes were firmly shut, I couldn't see, my nose was just running and full of mucous and it just felt like my entire face and my ears were burning up; like the best analogy I can come up with is, I'd somehow gotten my face stuck on a hot burner, an element, and I couldn't peel it off. And during that time, I was hyperventilating, sobbing, screaming, kicking the door--basically just begging and pleading for somebody to help me, to make it stop.

Mr. Bailey and Mr. Brooks were in a state of considerable discomfort but they conceded that Mr. Wolinetz was in the most serious situation. Mr. Brooks described Mr. Wolinetz's plight as he saw it soon after he joined him in the van:

> Q: Carry on. So you're in the paddy wagon, then what happened?
>
> A: We're in the paddy wagon. David had clearly been doused with pepper spray. He was soaked, absolutely soaked in it. And in excruciating pain. I mean, it's difficult to put into words what I witnessed. And I couldn't help him--obviously, I couldn't help him.
>
> Q: Were you all in the same compartment?
>
> A: Yeah, that's right. He was writhing in agony. I mean, he was kicking the doors. He was screaming for some relief. It was burning his skin, he couldn't see, he had had it in his eyes. And it causes, I assume, some kind of involuntary--involuntary blindness--
>
> MR. COMMISSIONER: Was he cuffed?
>
> THE WITNESS: He was cuffed. As I was loaded in they--they were screaming for water. They needed help, and they didn't get any at that time.

Mr. Brooks discussed his own condition:

> It was intensely painful, excruciating--I felt like my face was on fire, that I had scalding water or something that had just been poured on me. It was just an intense burning sensation that I could do nothing about. I was given no relief whatsoever.

Some assistance did arrive approximately a half hour after the four were placed in the van. All of them did have some water poured into their eyes, though they said it was a small amount and quite insufficient to bring meaningful relief. They believed that this assistance came from police officers but the van driver said it was ambulance personnel and that is likely the case. The prisoners were substantially blinded during this time. I have concluded that the assistance given, while helpful, was not enough to bring immediate and substantial relief.

The prisoners were taken to the UBC Detachment where they were transferred to another van and taken to the VPD holding cells in downtown Vancouver. Mr. Wolinetz said that while he was at the UBC Detachment, he asked for decontamination and cleansing but it was not provided. He said it was not until he was on his way downtown in the second van that his vision returned to him. He estimated that this was between 5:30 p.m. and 6:00 p.m., which is the time he was booked into the VPD cells. It was not until they arrived at the VPD cells that the handcuffs were removed from the prisoners and washroom facilities were made available. They were held in the cells and released after 11:00 p.m.

Cst. Homeniuk acknowledged that he had some responsibility to deal with the prisoners in the van who were suffering from the spray but, in my judgment, he was not particularly helpful to them. He acknowledged that, once the ambulance attendants had left, the prisoners remained locked in the back of the van and he returned to the driver's seat. Everyone stayed in those positions for about a half hour. He said the prisoners continued to complain about their eyes being sore and asked for more water but he was there alone and there was nothing he could do.

His conversation with the prisoners did not reflect an appreciation on his part of the very painful experience they were undergoing in the closed van with their hands cuffed behind their backs. Mr. Brooks said that Cst. Homeniuk's response at one point was to the effect that "you got what you deserved. I hope you've learned a lesson." Cst. Homeniuk acknowledged having told the prisoners "if you want to dance, you have to pay the band." In my judgment, that pretty much reflects the way Mr. Brooks and the others described Cst. Homeniuk's attitude towards them.

Insp. Ryan spoke to the responsibility resting with the police for providing decontamination and reassurance:

> If you go to apply spray to a crowd, you have to be prepared for a number of people who would have to be decontaminated. And that has implications with regards to the amount and the method that you bring water to the event. It certainly has implications for the paramedics that are present or police officers who are trained first aiders. And it speaks to a requirement to--to be able to meet the requirements of the policy which speak directly to police having to--to provide reassurance and decontamination once OC is applied. Because of the numbers of people that you're speaking about, there are a number of logistical considerations that are outside the norm that have to be taken into account.

I believe that the RCMP did appreciate that it held that responsibility. When questioned why Mr. Bailey and Mr. Wolinetz were placed in the van without adequate care, S/Sgt. Stewart said "I don't know how it happened and it shouldn't have happened."

I also believe that RCMP members did honour that responsibility earlier in the day when some of those who were sprayed at the time of the noon hour rally needed assistance. Cst. Fulks had specific duties and responsibilities as a paramedic and he performed in a responsible manner at that time. He said that his function on November 25 was first and foremost as a medic. Commission Counsel correctly captured his role and participation:

> Cst. Fulks, who assisted the QRT, was certified for a medical response team. He was trained at St. John Ambulance Advance Level II First Aid as well as RCMP adapted courses for tactical troops and police needs. As a member of the QRT he was to be available as a medic should anyone be injured and to assist with any other tasks. He spent most of his time with S/Sgt. Stewart. Cst. Fulks assisted to decontaminate some protesters, particularly Mr. Salas [the man who suffered respiratory distress at the noon march] after the fence came down. He was responsible for bringing in the two 5-gallon water sprayers.

Immediately after the fence came down at the noon rally, Cst. Fulks arranged for the delivery of two garden spray type yellow canisters full of water to be set up as decontamination stations should there be further incidents involving OC spray. Cst. Fulks set up the two stations with saline solution and the canisters were fitted with spray nozzles to provide a gentle mist to decontaminate affected areas.

Each Quick Response Team member carried an individual kit containing a bottled solution of water and boric acid to be used as a flush either by the officer or on anyone else. In addition, the teams had bottled water and saline solution available.

On learning that Quick Response Teams were going to Gate 6, Cst. Fulks took it upon himself to approach the two bicycle paramedics who had been at the fence incident earlier in the day and ask them to go to Gate 6 as a precautionary measure "because I had no idea of the level of resistance we were going to be meeting at that area." Those two paramedics arrived before S/Sgt. Stewart, Cst. Fulks and the two Quick Response Teams.

Cst. Fulks was asked what he knew of the handcuffed protesters in the police van who were banging, kicking and screaming for help. He said he knew nothing of that until well after the end of the APEC conference. I believe him. He said no RCMP member had approached him, although many of the officers there would not have been aware of his availability.

The prisoners in the van should have received the same prompt and thorough treatment as Mr. Douglas received. They did not. Those who put the prisoners in the van should have alerted responsible people such as Cst. Fulks, S/Sgt. Stewart or Sgt. McLaren and the bicycle paramedics that there were people who needed attention.

Perhaps they considered that, once Cst. Homeniuk had custody of them, all responsibility rested with him. Counsel for S/Sgt. Stewart and Sgt. McLaren placed responsibility with the driver once the prisoners were left in his custody. Counsel pointed out that the driver was not under the direction of S/Sgt. Stewart. Counsel may well be correct about the responsibility of the driver. In any event, I fault the driver for his very casual response to the agony of those in his care. Surely he was not there without some form of electronic communication and those continuing to deal with the clearing of the gate were not that far off. Criticism does attach for the way this situation was handled, though I do understand that this was a tense time, with the safety of the exiting world leaders first and foremost in the minds of all those playing a part in providing security services. Nevertheless, the conduct of the members of the RCMP that resulted in Mr. Wolinetz, Mr. Bailey and Mr.

Brooks receiving the inadequate decontamination treatment that I have described was certainly not appropriate to the circumstances.

I reject the cynicism inherent in the conclusion put forward on behalf of the complainants that the difference in treatment afforded to Mr. Douglas and the prisoners in the van is explained by the fact that Mr. Douglas was "employed by a national news organization, and there could be repercussions arising from his assault." Cst. Homeniuk knew nothing of the Douglas incident and Cst. Fulks' actions were neither influenced by such a proposition nor explainable on such a basis. I believe Cst. Fulks to have been honest in the presentation of his evidence.

28.6. Changing Views

There is one remaining matter to address in this chapter. It relates to comments made by Cpl. Flamank and Insp. Dingwall about the method and timing of S/Sgt. Stewart's clearance of Gate 6.

28.6.1. Cpl. Flamank

I will first consider the Flamank matter. As has been pointed out, Cpl. Flamank was the Commander of Zone 3, which included the Gate 6 area. He was present when S/Sgt. Stewart and the two Quick Response Teams arrived. S/Sgt. Stewart acknowledged that he did not know Cpl. Flamank by name and that during the few moments between his arrival at Gate 6 and addressing the protesters "I never talked to him."

Cpl. Flamank said at that point he stood off to the side, positioned so that he did not hear what S/Sgt. Stewart said to the protesters, though S/Sgt. Stewart's body language told him that he was saying something. Cpl. Flamank said he saw what he came to know was a stream of pepper spray and he saw the students disperse down one of the other streets.

Cpl. Flamank then went back down Northwest Marine Drive into the campus to checkpoint 13, which was within Zone 3. Sgt. Beaudoin, with whom Cpl. Flamank was sharing his Zone Commander duties that day, was seated by the side of the road in a police car and they spoke. Cpl. Flamank described the conversation:

> Q: Well do you recall what that--what you said to him?
>
> A: I said to him, probably something along the line that I didn't think it was necessary that he--that Stewart had done what he did and that I was unhappy with what had happened.
>
> Q: And can you explain why?
>
> A: In my eyes, we had a peaceful group of protestors and I wasn't aware of any reason why that they couldn't continue to sit where they were, and then what seemed to be relatively quick, Staff Stewart shows up and the protestors were dispersed with pepper spray. I had no idea why he was doing this, I guess, and that was probably one of my reasons for being frustrated at the situation.

In further examination, Cpl. Flamank gave this evidence:

> Q: Right. And you heard him mention something at the time, right?
>
> A: Again, I saw his body language and it appeared that he was saying something to this group.
>
> Q: Okay. And fair enough. Let's leave that, for now, at that. And sir, whatever the reason, why he was there, whatever the reason why he was there, it was your judgment, at the time, that you've expressed to Constable Beaudoin that the students were not given enough time to respond to Staff Sergeant Stewart's commands before they were pepper sprayed. That was your view, right?
>
> A: Yes.

Cpl. Flamank then added "[f]rom my perspective on that day I don't think he gave them enough time". Cpl. Flamank repeated that position twice while giving his evidence. Cpl. Flamank was asked if the view he took of the matter and expressed on November 25 to Sgt. Beaudoin was still his view. He responded:

> Since the time that this happened and obviously today a lot of time has passed and a lot of media coverage around this event has--has occurred, and I now can sort of understand why he did what he had--had to do.

Later he said:

> I can give you--say that I can understand some rationale for why he reacted the way he did. . . . I understand now, why he may have acted the way he did.

Cpl. Flamank outlined four factors that he did not appreciate or understand when he spoke to Sgt. Beaudoin:

> Q: Well, for example, when you formed that opinion and communicated it to the Sergeant, is it correct that you did not then understand that Gate 6 was going to be used at--as the exit for the motorcades?
>
> A: That is correct.
>
> Q: You were not aware that Stewart had been under instructions to come to Gate 6 and clear the protestors from the roadway?
>
> A: I was not aware of that.
>
> Q: You weren't aware of any time constraints that were imposed upon Stewart for the accomplishment of that task?
>
> A: No.
>
> Q: You weren't aware that other protestors might be en route to that scene, or that site, to re-enforce those who were present on the roadway?
>
> A: I was not aware that more were coming, but I realized after this crowd was dispersed that more students/protesters seemed to now have been in the area.
>
> Q: Yes. None of those factors were--were in your contemplation when you formed your opinion at that time?
>
> A: That's correct.
>
> Q: And do I understand that today, you do not share the view you--or you do not hold the view that you expressed to the Sergeant on that occasion?
>
> A: That's correct.

I am satisfied that those are the reasons that led to Cpl. Flamank's later understanding of why S/Sgt. Stewart acted as he did when addressing the students and dispensing the pepper spray.

Complainants' counsel characterized Cpl. Flamank's understanding acquired after he spoke to Sgt. Beaudoin as a "change of mind." Counsel asked:

> Q: It's--I take it, sir, you've heard of the ethos that works within just about every Police Force in North America, that it's not a nice thing to do anything which amounts to testifying against a former Officer? Would you agree with that?
>
> A: I've heard of this, yes.

And later:

Q: My question to you, sir, is what have you heard of? Can you be any more specific?

A: What--what you said, but I'd take it a step further and say that if I was in a position where I felt any Police Officer was doing anything wrong, I would take steps to correct that. I would not--what you are informing here is that I would be covering something up, not a chance, sir.

I accept the truthfulness of Cpl. Flamank's answer that he was not engaged in covering anything up and I accept his evidence when he rejected the suggestion that his evidence resulted from expressed or implicit but real pressure on him from within the force. It follows that I also reject as unfounded the submission by counsel for some of the complainants that: Cpl. Flamank's evidence was "designed to attempt to rehabilitate S/Sgt. Stewart and remedy the crack in RCMP solidarity created by Flamank's statements to the internal investigators who had taken his statement."

28.6.2. Insp. Dingwall

The comments made by Insp. Dingwall also relate to his assessment of S/Sgt. Stewart's performance at Gate 6. Prof. Pavlich told the hearing of a debriefing meeting on the November 25 campus events held on December 8, 1997, attended by senior personnel from both UBC and the RCMP. Prof. Pavlich and Insp. Dingwall were present and Prof. Pavlich gave evidence of what he understood Insp. Dingwall to have told the meeting:

> The other area was Gate 6, and he felt there that the RCMP had a problem. And he said the reason was because the roadway had a lot of students demonstrating, and quite legitimately, the officer in charge there had asked these people to vacate the area. And if he could have insisted that they vacate immediately, move away, but instead he had said, "I'll give you a minute to move." And then, without waiting the minute, he had immediately proceeded to pepper spray, or given the orders to pepper spray. And he said he felt that that--there was an area of vulnerability for the RCMP there.

Insp. Dingwall acknowledged that was an accurate recording of what he had said at the meeting but said he was not at the time in possession of all the relevant facts. Most significant was his mistaken belief that S/Sgt. Stewart, in his direction to the protesters, had said "you have one minute to move." Once Insp. Dingwall came to understand, subsequent to the December 8 meeting, that S/Sgt. Stewart had not said "one minute to move" but rather "one opportunity to move," he changed his mind about there being vulnerability for the RCMP and went so far as to express the view that S/Sgt. Stewart had not acted improperly.

While Insp. Dingwall referred to other factors as also playing a part in his change of viewpoint I do not consider those other matters to be directly relevant. My conclusion is that he changed his mind because of the information he later acquired about S/Sgt. Stewart's actual words to the protesters. While I have made it quite clear that I completely disagree with Insp. Dingwall's ultimate conclusion with respect to S/Sgt. Stewart's use of pepper spray at Gate 6, I do believe that his explanation for disassociating himself from what he said on December 8 was an honest one.

29. COMPLAINT CATEGORY 17: TREATMENT OF PRISONERS AT RICHMOND CELLS

The complaints are that:

- the driver of the wagon taking prisoners to the Richmond Detachment intentionally made the trip uncomfortable and long;
- at the Richmond cells, the prisoners were denied access to lawyers and access to washrooms;
- the prisoners were placed in overcrowded cells;
- the prisoners were denied blankets, given inadequate food, and threatened with pepper spray;
- the prisoners were held in custody for an excessive length of time; and
- female prisoners were unnecessarily strip searched.

29.1. Richmond Detachment Unprepared for APEC Prisoners

I have already reviewed the RCMP's failure, in the planning stage for APEC conference security, to notify the Richmond Detachment that it should expect to receive and hold persons arrested on campus on November 25.

Activity in the cells at the Richmond Detachment during the morning hours of November 25 was just like any other day. As usual, one guard was on duty in the cells. That morning it was Guard Priscilla Fraser, who had been on shift since 7:00 a.m. Cst. Karina Watson, of the Richmond Detachment, was on duty as the radio room constable.

At about 10:40 a.m., as the first two UBC prisoners were being booked in to the Richmond cells, Guard Fraser received a call from S/Sgt. Randy Kuharski, the Watch Commander then on duty upstairs in the same building. He told her that the UBC Detachment was bringing prisoners to be held in the Richmond cells. Guard Fraser sought and received permission from S/Sgt. Kuharski to call in a second guard to assist with the anticipated volume of prisoners. Guard Lorill Rice-Wells was called and responded immediately, arriving for duty at 11:20 a.m., just before the first of the two busloads of prisoners arrived from UBC.

The two guards were neither RCMP members nor RCMP employees. Their employer was the City of Richmond but they worked in the cells under RCMP direction and in accordance with Detachment rules and regulations.

29.2. The Bus Ride to Richmond

The driver of the bus that brought 38 more prisoners from UBC to Richmond, in two trips, was S/Sgt. Frank Shedden. S/Sgt. Shedden at that time was stationed at the Whistler Detachment but was brought to Vancouver at the beginning of the APEC conference. He was designated as a member of one of the Quick Response Teams and, two or three days before November 25, he was told that he might be called upon to drive one of the large prisoner vans. He was permitted to leave the Quick Response Team for a short time to go and inspect the van. He found it to be a "little wide and heavy" but otherwise normal and within his capability to operate.

On the morning of November 25, as his Quick Response Team was arriving at Seaforth Armouries, S/Sgt. Shedden was directed to pick up the van in downtown Vancouver and go to the UBC Detachment where he picked up the first load of prisoners and was directed to transport them to the Richmond Detachment.

S/Sgt. Shedden was unfamiliar with Richmond and had never seen the RCMP Detachment. He testified that, when he learned that he might be called upon to drive to Richmond, he wanted to drive the route in advance but never had the opportunity because his Quick Response Team was "pretty constantly in action" in downtown Vancouver.

Some of the prisoners undoubtedly were crowded and uncomfortable in some of the cubicles within the van on the trip from UBC to Richmond.

The first trip lasted longer than it should have because, once in Richmond, S/Sgt. Shedden had difficulty finding the RCMP Detachment. In fact, he unknowingly passed it at least twice. Eventually he stopped at a gas station to ask directions. Some of the passengers thought they were deliberately being taken on a rough and circuitous ride, but that was not the case. Obviously, pre-APEC planning was deficient in not familiarizing van drivers with their responsibilities, including routes and destinations. I reject completely the suggestion that S/Sgt. Shedden intentionally made the trip uncomfortable and long. He did his best under the circumstances within which he was working.

S/Sgt. Shedden drove the first load of prisoners into the prisoner bay which was part of the lower level of the Richmond Detachment building and they were then unloaded into that large area.

29.3. Booking In the Prisoners

Cst. Semeins was a member of the UBC Detachment. That morning he had brought prisoners Jaggi Singh and David Malmo-Levine to the Richmond cells. They had been in custody overnight and were scheduled to appear in court in Richmond. They were booked into the Richmond cells at 10:40 a.m. and 10:41 a.m., respectively, and Cst. Semeins stayed on to help with booking in the rest of the prisoners.

Cst. Watson, Cst. Semeins and Cst. Michelle (Mark) Liu of the Richmond Detachment and Guards Fraser and Rice-Wells, assumed responsibilities for processing the prisoners. In the afternoon, when his other duties were mostly done for the day, Deputy Sheriff Kendall Howard helped out.

29.3.1. The Prisoners

Including Mr. Singh and Mr. Malmo-Levine, 40 prisoners were in the cells from UBC, about 15 of them having arrived in the first load delivered by S/Sgt. Shedden and the remaining 23 in the second. Of the 38, there was one female juvenile, six male juveniles, 15 female adults and 16 male adults.

None of the 38 prisoners delivered by S/Sgt. Shedden ever appeared in court to face charges. All but Mr. Doucette and Ms. Muttray had been arrested for breach of the peace pursuant to section 31(1) of the *Criminal Code*, many of them at the time of the collapse of the fence at the noon rally, in circumstances reviewed in Chapter 23.

Most were UBC students who had been arrested through a "negotiated arrest" process whereby the RCMP accommodated the wishes of the protesters to be symbolically arrested. Only eight of the protesters had been arrested for breaching the police line. All the other arrests were voluntary. There was nothing to indicate that any of the protesters had any weapons or were violent and there was certainly no need to preserve evidence. There was nothing to indicate that they posed a risk to each other, to the police or to other inmates.

29.3.2. The Process

The booking process is not a simple one. It involves paperwork, the receipt and safe storage of possessions, a body search and escorting the prisoner to a cell location. Cst. Watson was asked to explain the procedure:

> Q: All right. Now, they all stayed in the prisoner bay for some time. And could you describe the process that you undertook to bring them forward and get them booked and the paperwork done, et cetera?
>
> A: Sir, we have a form that's called a C-13, which is a booking in log. To facilitate the number of people, we attempted to fill in as many booking in sheets, the top part, with the person's name, prior to them entering the guard's area, and the booking area. As the booking room became free, one person would be moved from the prisoner bay into the cell area, and if it was--had been taken over by another person, as one person had to stay in the insecure area, which is where the prisoner bay is, because there was prisoners there, we had to maintain at least one Police Officer in that area. The person would be handed off to another person, taken into the booking room where their belongings would be taken and recorded on the C-13. And then they would be moved into cells when they were finished being searched and processed.

That is generally how it worked. There is some dispute as to whether that was the precise procedure followed throughout the day but that will be considered later in this chapter. Cst. Liu estimated that it took between five to 10 minutes that day from the time a prisoner was taken from the prisoner bay until he or she was placed in a cell.

29.3.3. Bathroom Privileges

There was a suggestion that, soon after arrival, some of the prisoners were denied bathroom privileges. While there may have been some delays caused by the confusion resulting from the unexpected arrival of so many prisoners, I am satisfied that the bathroom needs of the prisoners were not unduly delayed and I make no criticism of the police officers in that regard.

29.3.4. Crowding

On November 25 there were a few other prisoners in the cells who had no connection to the APEC-related activities at UBC. They had been brought in by sheriffs for court that day. The evidence did not reveal whether the additional prisoners were male or female, or whether any of them shared cells with the protesters, although Cst. Watson's evidence does suggest that there may have been some sharing.

There were eight cells and a drunk tank at Richmond on November 25. Two cells were designated for juveniles, two for adult females and four for adult males. There were bunk beds and a toilet in each cell. Occasionally, if there was an overflow crowd, a floor mattress could be supplied and three persons placed in one cell.

Obviously, numbers considerably in excess of normal capacity had to be accommodated in each cell that day. The allegation that the prisoners were placed in overcrowded cells is correct. Some movement was necessitated by the need to accommodate the juveniles in separate cells from the adults. The norm was five to six prisoners per cell that day but at times there were more, possibly double that number, for short periods of time. I am satisfied that the attending constables and guards did their very best in a difficult situation as they allocated cell space.

29.3.5. Delayed phone calls

The formal booking in of the first load of prisoners took from 12:25 p.m. until 1:40 p.m. and the second group from 3:07 p.m. to 5:10 p.m.

A major issue for the prisoners was what they saw as unreasonable delays in allowing them telephone access to contact lawyers and, in some instances, family members. Before the first load was booked in, it was impossible to accommodate the telephone requests. There was only one private telephone room. An officer or guard had to accompany the prisoner to the telephone room and back. In the time between the completion of the booking in of the first group and the commencement of the second, seven prisoners were escorted to make telephone calls. Those calls, including the time required to escort the prisoners to and from the telephone room, consumed 44 minutes. The guards and officers had many other duties to perform over this period. There were no bathroom facilities in the drunk tank, so some escorting was required to accommodate bathroom needs. Cst. Watson telephoned a lawyer whose telephone number had been given to many of the prisoners and she tried to arrange for that lawyer to come to the Detachment. As it turned out, someone from the law firm did attend but was not allowed access to the cells because the person was not a lawyer. All this took time and before the actual booking in of the second group, beginning at 3:07 p.m., staff had to attend to preliminary matters pertaining to this group of prisoners who had arrived some time earlier in the prisoner bay area.

Soon after the second group had been booked in the telephone calls resumed. The first was made by Ms. Muttray at 5:28 p.m. She had been booked in at 12:54 p.m. and had been in custody since her arrest earlier in the morning. It is unfortunate that she had to wait so long to use the telephone. Other telephone calls continued and by the time the UBC prisoners were released, 24 of them had made calls, some more than one.

Section 10(b) of the *Charter* says that everyone has the right, on arrest or detention, to retain and instruct a lawyer without delay and to be informed of that right. In *R. v. Strachan* (1988), 46 C.C.C. (3d) 479 (S.C.C.), Dickson C.J.C. held that, in the circumstances of that case, the right to counsel began only once the police had a potentially volatile situation under control and there was no reason why the arrestee should not have been allowed to call a lawyer. Commission Counsel cited *Strachan*, correctly I believe, for the proposition that a person's section 10(b) right may be qualified by what is reasonable in the circumstances.

Given all of the circumstances, I conclude that the officers who had custody of the prisoners made every reasonable effort to comply with the *Charter* requirement. The opportunity to make telephone calls was given as soon as those requests could reasonably be accommodated.

The exception is the case of Ms. Muttray. Even there, I am not prepared to find any conduct inconsistent with the *Charter*. If she was overlooked as turns were granted it was unfortunate. It may well be that, with the second group awaiting processing, the officers had to turn their attention to that task. The delay in Ms. Muttray's case was never clearly explained and I believe that it was because the officers were unaware of her circumstances, given all of the demands placed upon them at that busy time.

Cst. Semeins summarized the situation very well when answering a question about what explanation he had given to prisoners about the basis for their arrest:

> I made it a point of updating the prisoners with as much information as I knew. I told them--I recall telling a group of them, like, I recall actually being--if I could just show you on the chart here. I recall being in the male prisoner area here, as well as the juvenile prisoner area, talking to a group, asking them to calm down, and I'll tell you what's going on. You're being held until APEC is completed, and phone calls will be made when such time that we can take care of all the other prisoners that were in the prisoner bay. I just--dealing with a large number of people, it's a very unique situation, and when you're dealing with single prisoners, you can--you're able--you've got a little bit more freedom in the times about, like, being more diligent about giving phone calls right at that moment. But dealing with such a large volume of people--

> people were getting agitated, they were pretty upset in cells. So, I tried to give them as much information as I knew it at the time.

29.3.6. Agitation in the Cells

Cst. Semeins was correct about the agitation that was building in the cells. Even though almost all the prisoners had been voluntarily arrested in order to make their point and with full knowledge that they would be surrendering their liberty for a period of time, they were quite unhappy with the circumstances under which they were being held. Tensions built up and there were unpleasant exchanges between prisoners, RCMP officers and others at the site.

For example, prisoner Christina McCarthy gave evidence about prisoners singing, chanting and making up what she called silly songs in order to pass the time and make as much noise as they could. She was asked if anyone spoke to them about the singing:

> A: Yeah--at--we sang for a long time. As I said, we were making up songs and we were singing children's songs, and it was mostly to pass the time, as well as to in some--in my case, some--in some way to keep some of the fears and some of the other things I didn't want to think of at bay. And at one point--at one point we were told that we were going to be getting out around 7:00 or 8:00 p.m., I believe, and it must have been around that time, because we were starting to think we were going to be able to go soon, and this--this Police Officer or this--I don't know what he was, came in. He was perhaps in his late forties or early fifties, and he said something to the effect of "congratulations, your singing has just bought you five more hours."
>
> . . . .
>
> Q: Okay. And--and when--when that person said that, what did--did you--did you believe that was true?
>
> A: Oh yes, very much. That was the first point at which I started to cry, and in fact all of us were just--I mean, it was like pandemonium for a few moments. Screaming and swearing at him and--and yelling. And--and I just--I think that was when I--I felt a lot of--a lot of fear then, and I felt very much as that they had taken everything else from us and now they were taking--trying to take our voices away. And what ensued was a discussion amongst the women in the two cells as to whether or not we should continue singing. And there was a difference of opinion, because some people felt that maybe he was--maybe it was just a threat and that he wasn't intending to keep us there for five more hours, while others felt that well we were five more hours anyway, so what did we have to lose. But I know, we didn't end up singing, and personally I made that choice, because although I felt ready to continue singing myself, I didn't want to make that decision for another person. I mean, I felt prepared

> to give up some more of my freedom, but I couldn't make that decision for another person, who would--who didn't want to do that, so we stopped singing.
>
> Q: And how long after that was it, that you were in fact released?
>
> A: I wasn't released until close--around 11:00 o'clock, but some people began to be released shortly thereafter, perhaps around 9:00.

I accept that evidence as a sincere contribution by Ms. McCarthy to portray the environment as she perceived it to be at that stage of her confinement as well as her emotions at that time.

Guard Ronald Docherty had come on duty at 7:00 p.m. as a replacement for Guard Fraser whose shift ended at that time. He said that before she left, Guard Fraser briefed him on the situation. He acknowledged that he had said to the prisoners that the more they sang or the more noise they made, the longer they would be kept in the cells. After referring to what he described as the aggressive use of profanity by the prisoners, and "hollering, screaming, banging of cells," he said he walked to the cells and "said to the girls that if you would keep quiet you will be released a lot faster" than by causing "all this commotion, agitation and noise." I accept that Guard Docherty described the scene as he believed it to be soon after he assumed his duties on the evening of November 25.

Some of the complainants alleged that, while in the cells, prisoners were threatened with pepper spray. Of course there was no spraying at that time and place and I am not satisfied that any RCMP member made such a threat.

29.3.7. The Evening Meal

While all of this was going on, Guard Rice-Wells was in charge of preparing an evening meal for those in custody. It consisted of pork and beans, bread, butter, coffee and tea. Ms. Muttray testified, "It wasn't good, but it was O.K." For the vegetarians, of which there were many, bread, coffee and tea was all that was available. Other options such as macaroni and cheese were frozen and, for that reason, could not be served. The guards said that they could not begin to consider the menu until their booking in responsibilities were completed, after 5:00 p.m. Also, they did not know earlier in the afternoon whether the prisoners would still be there at meal time. I am satisfied that those on duty at the supper hour did their very best to meet the nutritional needs of those in custody although, for vegetarians, bread, coffee and tea was clearly not a satisfying meal.

29.3.8. Blanket Requests Denied

Staff on duty turned down requests for blankets. They generally took the position that blankets were for overnight prisoners and were reluctant to produce them earlier in the day. Cst. Watson said that was Detachment policy. Guard Fraser expressed concerns about meeting an individual request that would start a chain reaction resulting in all of the prisoners wanting blankets.

Some heaters were operating in the cells but it is unfortunate that individual needs were not taken into account when blankets were requested. Ms. Thorburn, for instance, was wearing the paper suit she was given at UBC Detachment after she removed her clothing, which was saturated with pepper spray. She should have received special consideration but, once again, the heavy work load being carried by the officers and staff on duty was obviously a significant factor.

29.3.9. Conduct was Not Inappropriate

Things were not perfect, from anyone's perspective, in the Richmond cell block during the afternoon and evening hours of November 25. All but a very few of the protesters in the police cells were there due to their own actions earlier that day which they hoped would result in their arrest and place them in custody. They achieved that goal. The service they received where they were temporarily lodged was not to their liking. Unquestionably, that service was considerably less than perfect but I reject the suggestion of inappropriate RCMP conduct. The officers did their very best to cope with the chaotic situation thrust upon them. They did all they could, under the circumstances, to meet their responsibilities.

29.4. Were Female Prisoners Strip Searched Unnecessarily?

29.4.1. Only Women Were Strip Searched

All of the 15 adult women arrested at UBC on November 25 and booked into Richmond Detachment cells were strip searched by a female officer or guard. The 16 adult men arrested and booked the same day, under the same circumstances, were not strip searched. Rather, they were subjected to a "pat" or body hand search by male officers who felt through the prisoners' clothing, searching for contraband. The female officers and guards strip searching the women were unaware of the type of searches being done on the men, just as the male officers were unaware that the female prisoners were being strip searched. None of the juveniles were strip searched.

The strip searching of the women was done by Cst. Watson and Guard Fraser. The men were searched by Cst. Liu and Cst. Semeins. Only one of the four was present for each search. Guards only conduct searches on instructions from a police officer.

The first question that arises is: Why were the women strip-searched? Was it a result of policy, or was it a decision made by individual officers at the time?

29.4.2. Existing Richmond Policy

The existing Richmond Detachment search policy directed that prisoners be searched thoroughly by a member of the same sex. The only direction regarding the type of search provided:

> Use the metal detector to assist when a strip search is not undertaken.

There was considerable evidence given at the hearing regarding the meaning of this policy and the effect it had on the type of searches carried out at the Richmond Detachment.

29.4.3. Interpretations of Policy

Guard Fraser participated at the request of Cst. Watson, who realized that the sheer number of prisoners meant she would need assistance. I am satisfied that neither Cst. Watson, Cst. Liu nor Cst. Semeins directed Guard Fraser as to the type of search she was to conduct. Guard Fraser testified that it was normal practice at Richmond Detachment in November 1997 to strip search female prisoners before putting them in cells. She said it was not up to her to decide whether to strip search a prisoner. Rather, she understood these were standing orders. She testified that she had been instructed to conduct strip searches of female prisoners as a matter of course. The only exception to the rule that Guard Fraser could think of was that juveniles are generally not strip searched. The only female juvenile booked into the Richmond cells on November 25 was not strip searched because she was just 15 years old.

Insp. Speevak confirmed his understanding of the written "either/or" policy at Richmond Detachment in 1997: that any prisoner coming into cells was to be searched thoroughly, either by way of strip search or with the assistance of a metal detector. He said, however, that it really was a "procedure" rather than an absolute "policy." At another point in his evidence, Insp. Speevak explained his understanding as follows:

> I do not believe our policy was that everyone was to be strip--strip-searched, rather, that all prisoners were to be searched thoroughly, and that if--and the most thorough search is a strip-search. If the officer can justify in their mind why they need not carry out a strip-search, then a strip-search need not be done. The policy specifically said that if you don't strip-search then use a metal detector.

Cst. Watson testified that the policy at the Richmond Detachment was that "if a metal detector isn't used, you're to use a strip search." Although the policy provided two options, Cst. Watson said, when questioned by Commission Counsel, that she never used a metal detector.

All of her evidence is consistent with the position that a strip search was the norm at the Richmond Detachment. However, when questioned by her own counsel later the same afternoon, she said the policy was that if the metal detector is not used, "it's my discretion to take each case individually and decide whether I feel the risk has been eliminated or whether the need for a strip search is still there."

29.4.4. Risk Elimination and Mandatory Searches

It has been most difficult to rationalize the foregoing evidence. It would not be difficult to conclude that the "either/or" policy was a black and white one and that, since no metal detector was used (Cst. Watson never used one), strip searches were a mandatory detachment requirement and they were carried out on November 25 for that reason.

That is the basis on which Guard Fraser operated that afternoon. She was not given any instructions by any officer that day other than to search. She strip searched because she understood that she was required to do so in every instance, except in the case of juveniles. She was not involved in any process of risk "elimination" and was not informed of any such process. Of the six female prisoners who gave evidence about their strip search experience, five were searched by Guard Fraser.

After Cst. Watson testified about the policy on searches if a metal detector was not used, she was asked about the considerations she took into account in searching the APEC protesters:

> For these group of individuals in this exact case, sir, I was informed that they had come from a riotous situation where they had a confrontation with Police. I was aware that they were protestors and I was unaware of if they wanted to carry their cause further into the cell area. They had been left with their belongings for a period of time in the secure bay--in the prisoner bay area, giving them opportunity to possibly secrete the items on their person. They were displaying a crowd mentality. The persons already booked into cells, showing a concern for the safe--possible safety of the others and they were also being booked into cells where I had the safety of other persons to be concerned with.

Cst. Watson testified that the objective of a search is to secure the safety of the prisoner, of the other prisoners and of police officers and guards; to find any evidence that may be on the prisoner; and to prevent the entry into the cells of contraband such as cigarettes and matches. She was asked if she had ever found items through a strip search that were missed during a pat search:

> A: In the past, I have found drugs of various sorts, marijuana, heroin. I have found needles. I have found matches. I have found tobacco. I--in one incident, I found a razor blade taped under a woman's breast. And items such as money has been found in a person's buttocks, and in some females, in their pads.
>
> Q: Would you expect a metal detector to locate those sorts of items that you've just described?
>
> A: No, sir, I would not.

Cst. Watson said she understands that she does have a discretion to decide whether to do a strip search in an individual case. In making that decision she takes into account "who is going to be strip searched, where they've come from, what their demeanour towards the police has been, if there's a possibility that they may try something in cells, how many other person's safety are an issue, where they've been held prior to the search." She was asked if she requires proof that certain items are hidden on the prisoner's person before searching:

> No, sir. To myself, and from my experience, it's a process of elimination, and in the instance of a strip search or searching of a prisoner, I go by the assumption that everybody had the capability of bringing an item into cells, and it's up to me, in my mind, to eliminate the risk. And if I cannot eliminate the risk, and thus provide a safe environment and preserve evidence, I conduct a strip search.

She confirmed that the risks that must be eliminated relate to safety, the preservation of evidence and the need to prevent contraband from entering the cells. She was asked to explain the meaning of contraband, in the context of the police cells:

> Matches, cigarettes, lighters, drugs, money, any items that could elevate a person's status while in the cell area with other prisoners, or could cause injury to themselves or the other persons, or could cause an injury of a person in the event that they have to go in and remove the items.

When questioned, Cst. Watson agreed that the policy on searches is one of "zero tolerance" when dealing with more than one person in a cell - that is, any risk at all is too much risk:

Q: Well how is it, Officer, that you ever can eliminate any risk of any of these three things occurring, of somebody bringing in something that's contraband, or--or--or a potential weapon, or evidence secreted? How can you ever eliminate that risk and allow any--any person to walk into those cells without a strip-search?

A: As I said, sir, the juvenile that went into cells was not strip searched because: a) she was going into the cells by herself. She was not being held, to my knowledge, for a long period of time and I did not feel the safety issue was as great a factor with her as it was with the other persons.

Q: So there was no risk in your perspective.

A: There was a slight risk, but not as great a risk.

Q: How slight a risk is okay from your viewpoint?

A: In a perfect world, sir, no risk would be the best. However, there's always going to be a risk.

The zero tolerance policy spoken of by Cst. Watson was endorsed by Insp. Speevak, who had had experience at Nanaimo and Whistler when jail cells received many more prisoners than their intended capacity:

Q: What are the principal concerns that arise when jail cells are overcrowded?

A: The main concerns, sir, relate to cellblock security and the safety and welfare of prisoners, officers and guards. The primary risk or the most major catastrophe that could occur in a cellblock would be a fire. Should a fire occur, each of the cellblock--you--you would have to conduct an evacuation of prisoners, each of the cellblock doors has to be opened independently, and the ability to do that in a short space of time before smoke and--and so on accumulates, implies that it is probably the highest risk in a cellblock.

Q: What level of risk would you consider to be an acceptable risk that there might be fire in cells when the cells are overcrowded?

A: We should have a--a zero risk, a zero tolerance if I can use that term, but a zero risk of fire and to prevent that, the highest level of security must be maintained when you're dealing with an overcrowded cellblock.

Q: And would you consider it necessary for your Members to take that into account when they're searching prisoners who are going to be put into cells which are overcrowded?

A: Yes, sir. At Richmond the risks in our cellblock that--that I previously outlined because of the age of the cellblock and its deficiencies, we try to make well-known to the Members. In addition to the circumstances of each arrestee, that is, the person who is being lodged in cells, and cell conditions on any given day. And this particular occasion, a very--what was potentially a very overcrowded cellblock.

Insp. Speevak testified that the strip searches done by Cst. Watson and Guard Fraser were more consistent with achieving the objective of "reducing our risks to near zero of a major incident in cells" than were the searches done on the male prisoners.

Insp. Speevak was questioned further on the subject:

> Q: All right. So, if the--I'm just trying to understand your understanding of the policy. The objective is to reduce the risk to near zero of something happening in the cells then, on your evidence, it would accord with the Richmond policy to do strip-searches?
>
> A: In this instance, yes, sir.

So, even though neither Cst. Watson nor Insp. Speevak accepted that the 1997 policy meant that if a metal detector was not used, a strip search was required, their interpretation of the policy reached, in this instance, the very same result; namely, strip search them all if the risk has not been all but eliminated.

Regardless of how one gets there, I believe Guard Fraser was correct in her conclusion that it was virtually a universal policy that all women prisoners booked into Richmond cells would be strip searched. Cst. Watson was asked for an example of an adult prisoner where she had eliminated the risk without conducting a strip search:

> A: As I said, sir, if--I have to look at many situations. Off the top of my head, I believe I had a female in cells last week that I didn't strip-search, and I'm trying to remember what the charge was. I believe it was shoplifting. And I brought her in. She was not combative. There was no prior history, no prior knowledge. She had been observed by store security. It wasn't a question of evidence, and she was being detained in cells for, I believe it was half an hour while I prepared the documentation.
>
> Q: You think-- –
>
> A: That would be--that--there's many others, but that's one example.

An alleged shoplifter with no prior history being detained for one half hour would appear to fit within the near zero tolerance policy of which Insp. Speevak spoke. My consideration of all of the evidence, both those portions that I have quoted and the much greater volume in the transcripts, satisfies me that unless she was such an obvious non-risk person such as the alleged shoplifter, a woman booked into the cells at Richmond would have been required to undergo a strip search.

29.4.5. *Policy Review*

Following the APEC conference, Insp. Speevak undertook a review of the cellblock policy at the Richmond Detachment, sensing that the November 25 experience signalled the need for some changes. The result was a 41-page report which recommended changes and said the reworded policy "should eliminate any question about whether or not there is a 'blanket' policy to strip search."

Insp. Speevak acknowledged that "there is a certain implication perhaps" in the policy in place in November 1997 that if a metal detector was not used, "strip searches were an automatic expectation." He said that the purpose of rewording the policy was to make it clear that there was no such automatic expectation and that "there must be a reasonable law enforcement objective" for a strip search.

29.4.6. *New Richmond Policies*

In August 1998, a new Richmond Detachment policy on prisoner handling was issued which reflected the changes proposed in the report commissioned by Insp. Speevak. Subsections 2(a) to (e) of the report dealing with "Booking of Prisoners" have been reworded and now read as follows:

> 2 Booking of Prisoners
>
> a. Search prisoners thoroughly. Officers are strongly cautioned to ensure that all property, especially anything the person could utilize to inflict self-injury, or cause injury or damage to anyone or anything within the Cellblock area, is seized prior to the person being lodged.
>
> b. Officers shall also ensure that before a person is lodged:
>
> 1. All jewellery is removed
>
> 2. All footwear is removed
>
> 3. All strings or cords from sweatpants, shorts or hooded sweat tops or similar clothing are removed

4. All bras and pantyhose are removed
5. All hats and other headgear are removed
6. All extra layers of clothing are removed.

c. DO NOT search persons of the opposite sex. Arrange for a qualified person of the same sex to undertake the search in private.

d. Should a member deem that a strip search of the prisoner is required, he/she is cautioned to bear in mind the current three tests of the Courts regarding lawfulness:

1. The arrest must be lawful
2. A valid law enforcement objective must motivate the search. These include:
    a. The protection of police officers, the prisoner and the public (including other prisoners) from dangerous objects on or around the prisoner;
    b. The discovery of items that may facilitate the prisoner's escape;
    c. The preservation of evidence from destruction;
    d. And the discovery of evidence in support of the offence for which the prisoner was arrested.
3. The search must be conducted reasonably.

e. Use the metal detector to assist when a strip search is not undertaken.

These changes were brought to the attention of Cst. Watson. In particular, she was asked whether she considered all four items included as "valid law enforcement objectives" on November 25, 1997, notwithstanding that that provision was not part of the then Richmond Detachment policy. She said that they were considered.

Also, an entirely new section has been added to the policy document entitled "Mass Arrest Procedures." It provides:

20. Mass Arrest Procedures

1. A mass arrest situation shall be defined as any situation where the number of prisoners exceeds our maximum capacity.
    a. The Watch Commander will immediately notify the OIC Operations and place an NCO in charge of the Cellblock area for

the duration of booking and release of prisoners and as required at other times.

b. The NCO i/c Cellblock will weigh the security needs of the Jail, including the types of prisoners being held at that time. The NCO i/c Cellblock will determine the need, if large numbers of prisoners are being brought in, to contact neighbouring Detachments or Agencies to house the prisoners.

c. The NCO i/c Cellblock will arrange for any extra staff deemed necessary to process the prisoners in an efficient and orderly manner including call-out of off-duty personnel and call-out JP's. The NCO i/c will assign sufficient members to maintain control of the prisoners.

d. Should the processing of these prisoners include fingerprinting and photographing, consideration should be given to having an Identification member attend the cell block/ABS room to process them.

e. The NCO i/c Cellblock will take into account the number of prisoners to be held and the requirement for meals to be provided.

29.4.7. National Policies

The Search and Seizure section of the National Operational Manual of the RCMP was placed in evidence. Portions addressing the current subject, in place in November 1997, included the following:

> G.3 Personal Search
>
> G.3.a General
>
> 1 . A body search is a thorough search of the clothing at the time of an arrest.
>
> 2. a strip search is a thorough search and examination of a person's clothing and body. It should only be conducted when there are reasonable grounds to believe the suspect is concealing evidence obtained during the commission of a crime or items that may be used to cause injury or death.
>
> . . . .
>
> G.3.b Member
>
> 1. When conducting a personal search, ensure you take the appropriate precautions to protect yourself.

1. Consult a medical practitioner if you accidentally puncture yourself or come into contact with bodily fluids from a person suspected to be in a high-risk category.
2. Do not search a person of the opposite sex unless immediate risk of injury or escape exists.
3. Conduct a strip search only on a person of the same sex, and in private.

29.4.8. Searches of the Male Prisoners

Cst. Liu was posted to the Richmond Detachment when he graduated from the RCMP Training Academy, six or seven months before the APEC conference. For the first six months, he was in the recruit training program where he was to learn on the job. He had completed that program less than one month prior to November 25. He searched several of the male prisoners arriving from the campus but conducted no strip searches. He understood that an officer's decision in that regard was discretionary. In deciding how to proceed, he said he tried to balance efficiency with the level of risk. He was asked what he meant by his reference to efficiency. He said:

> A: That was the--one of the factors I took into account, sir. If we did a thorough search or strip-search on every prisoner it would take a very, very long time.
>
> Q: And was there--did you have a concern about it taking a long time to process the prisoners?
>
> A: Yes, We didn't want the--we wanted to make sure that the safety of all prisoners were--were booked into cells as soon as possible so that they could get access to lawyers as well.

He agreed that, besides efficiency and risk, privacy and dignity were factors to be considered when exercising his discretion as to the type of search to be conducted. Cst. Liu said that, on that day, he did what he called "a thorough body search, frisk type of search, not just a pat search, sir." He explained what that entailed:

> The pat-search initially, in my mind, sir, is just with an open hand patting around the major areas of the body. What I'm referring to, the type of searches I did, are more thorough, including searching through waistbands, socks, hair, hats, things like that, sir.

He said that he was aware that all the female and male prisoners had been arrested under similar circumstances at UBC, that they appeared to be of similar ages and backgrounds, and that the males he was dealing with would be placed together in group cells. He said that, taking into account all the facts and the experience that he then had, he formed the opinion that a thorough body search was the appropriate type of search in the circumstances. However, with the experience he has had since the APEC conference, he said he would probably not make the same decision again if faced with the same situation. He mentioned the many concealed items that would not be found by the searches he carried out, but could not say with certainty that his practice today would be a complete change insofar as strip searches were concerned.

Cst. Semeins was the officer from the UBC Detachment. He had about four and a half years' experience with the RCMP at the time of the APEC conference. He also searched some of the males that day. He described his procedure as a thorough body search which consisted of scrunching up the prisoner's clothes in his hands, checking pockets, and feeling all over the prisoner's body. He said it was more than a pat down search: "it's a pretty intrusive search, you are rubbing your hands all over their body, scrunching up their clothes in your hand, making sure that nothing is concealed in there." Cst. Semeins testified that the purpose of searching prisoners is to protect the safety of the officers and other prisoners, and to preserve or gather evidence. He said that his experience and training had taught him that anything can be used as a weapon if the person is willing to use it in that way. He was asked in what circumstances he would do a strip search:

> The type of the offence, sir. If it's a drug-related offence where the person was trafficking small amounts in deck form a strip-search would possibly be done at that point, because it has been my experience that these individuals would hide such material on their person. A strip-search would be conducted. If weapons were associated in the offence, I would conduct a strip-search to make sure. In other instances, I would not conduct a strip-search, depending on the circumstances surrounding the arrests, whether or not I felt there was a risk or not.

He was asked why, on November 25, he decided on a body search and not a strip search:

> With the information that was available to me at the time, I did not believe there was a risk to conduct a strip-search. There were a lot of prisoners in the prisoner bay, more than usual, at--there's been times when it's been extremely busy in cells but the prisoners usually come in one at a time. I've experienced that in a larger Detachment before, but this is a situation where you had a large volume of prisoners in an area with a Member present. And so I was trying to get the prisoners into cells as quickly as possible, and I conducted a search that I thought was thorough enough for them to be placed in cells.

He added that factors to be taken into account in arriving at a decision also included the type of offence and whether or not there was a safety risk to himself, other officers or other prisoners: "I did not feel the risk was there therefore I did not conduct strip searches".

29.4.9. Strip Search Procedures

Cst. Watson described the procedure she followed in conducting a strip search:

> As I said, I'll have them stand in an isolated area. I will have the person lift up their top. If they're wearing a bra, I will have them remove their bra. If it is needed, I'll have them lift their breasts so I can see under their breasts. I'll check their arm--look visually under their armpits. I'll have them put their tops down. I'll have them drop their pants. I'll have them drop their underwear. If there's a pad, I'll have that removed, and supply another one to them. And if--once that's done, I'll have them spread their buttocks and I'll visually see if there's any contraband there. Have them put their underwear up, and have them put their pants up, and the--I will check their feet, physically with my hands. And I'll check their head and hair with my hands physically.

Q:	Do they actually remove their entire top?
A:	Most of the time, sir, they lift it up to their neck. Some people feel more comfortable taking it off if they have to take their bra off. Some people have to take their tops off to take their bra off, sir.
Q:	At any point throughout the process of your strip searching, are any of the female prisoners naked from top to bottom--
A:	No, sir.
Q:	--at the same time?
A:	No, sir.

Cst. Watson said that the removal of the bra is a precautionary measure taken based on RCMP experience that it may be used to injure the prisoner herself, or someone else. She said that, under the practice described, a women is disrobed from the waist up for about five seconds and, for the same period of time, from the waist down.

Guard Fraser described a similar procedure. When asked what happens if a woman is wearing a one-piece suit or dress she said "Well, then you obviously can't do it half and half."

Ms. Muttray was the only woman searched by Cst. Watson. She was taken to a self-contained and appropriate room described on the floor plan as the supply and locker room. She said a female guard was present in the room with Cst. Watson and her. I am satisfied that that was Guard Rice-Wells. Ms. Muttray was asked how she felt about the strip search:

> At that point I was just wondering why this was being done, because it didn't seem like a reason for it, because people who were coming into the jail were people who had committed themselves to civil disobedience, and, you know, there are certain guidelines and, one of them is of course, you know, don't bring any, you know, weapons, or booze, or drugs, or whatever. So, you know, for me, it was kind of, you know, I don't really understand it but, sure, I have to go along with it.
>
> And looking at it now, like I'd say, you know, the doors--the one door I could see was closed, only females with me in the room and it was only afterwards when, you know, the--when we, the prisoners, started talking to each other about it that, you know, that it seemed that it only had happened to the women and that's when it was starting to get concerned about the whole issue. At the time of the actual strip search, you know, it was a little bit embarrassing but I, you know, my background might be a bit different so I, you know, I didn't feel, like, too embarrassed about it.

The other five women who gave evidence of their strip search experience were Ms. Bonfonti, Ms. McCarthy, Ms. Thorburn, Ms. Worton and Ms. Westergard-Thorpe. They were all searched by Guard Fraser in what is known as the Booking Room. While that location has long been used for this purpose, it is entirely unsatisfactory. It adjoins what is described as the male guard room although it is used by all guards. There is no door to close the opening between the two rooms. When a search is conducted, anyone of the opposite sex present in the guard room is asked to leave and wait out in the hallway. Unintentional mix-ups sometimes arise with people coming and going at inappropriate times. That is the exception rather than the rule but a more adequate, private searching facility is most certainly needed. Complainants' counsel in oral submission made the point in the following way and I agree with her:

> The Complainants question, Mr. Hughes, a set up of a Detachment whereby these types of searches are conducted in a room with no door, adjacent to the main office of a large number of people. It doesn't really seem to make any sense. There was a room down the hallway, the supply and locker room, that was available and was used for Ms. Muttray. But, the evidence appears to be, that for the most part, searches at the Detachment are done in the booking room, in this manner, strip-searches. And again, it appears that the privacy interests of women being searched simply aren't really considered when--or weren't considered when this practice was adopted, and it wasn't an APEC specific practice. But on occasions such as APEC, where there's a large number of people coming and going, it would appear to be almost inevitable that accidentally or otherwise, men are going to be in the guard room.

The 1998 Review Committee commissioned by Insp. Speevak identified this deficiency and included a proposal to give prisoners being searched "a greater degree of privacy." He said that a request for the required renovations had gone to the City of Richmond but at the time the Inspector gave evidence in March 2000, it had not been acted upon.

Guard Fraser was fixed in her view that when she searched there was only one person present with her in the Booking Room. I am satisfied that was because that was her usual practice. The fact is that she acknowledged that she does not have any memory of doing any searches that day whether it was in the morning or the afternoon. She forgot that when she searched the five women I have identified and one other, they were in the Booking Room with her in pairs. In her oral submission, Complainants' counsel suggested that this was not routine procedure at Richmond Detachment, but probably something that occurred on this occasion "because of the sheer number." I agree.

Ms. Bonfonti was present in the Booking Room when Ms. Westergard-Thorpe was searched and visa versa. She was asked what they requested of her and what she had to do to be searched. She explained:

> A: Well they took--first she was searched.
>
> Q: Alissa, yeah.

A: And I--

Q: And can you describe that?

A: Yeah. Basic--well I was trying to, I mean it was kind of awkward, I was trying to give her some privacy even though we were in the same room and facing each other so I was not looking at her, necessarily the whole time.

Q: Yes.

A: Or trying more to look at her face, but, so I can't say so much about her but when I was--then when it was my turn, I took off everything I had on the top half of my body and then I pulled down my pants and she asked me to turn in a circle. I already had my boots off, she asked me to turn in a circle, I did, and then she says, okay you can leave on one layer of clothing for the cell.

Q: Okay. And when you say, she, who is it who is giving you these instructions?

A: I don't know who she was, actually she didn't--I wasn't sure if she was a Police Officer or not or more like a warden or something.

Ms. McCarthy, who took her turn in the Booking Room in the presence of another prisoner, described her experience:

> I was in this small room with another woman, another--another woman prisoner, and a-a female guard told us to--I don't recall what she said, but we were told to either remove our clothes or to strip, I don't recall what she said. We were-we were to remove our shirts first and--thank you--and brassieres.

MR. COMMISSIONER: Pardon?

A: And brassieres, our shirts and our brassieres and we were told to lift up our breasts. I don't recall if we were allowed to put on our shirts again, before we were told to take down our pants and our underwear. I don't believe that I had to--I was--I don't believe I was told to completely remove my lower clothing, because I don't remember taking off my socks, for example. And I don't remember stepping in and out of my pants, but I think we just had to drop them down to our ankles and--and then we got dressed again, we were not allowed to keep our brassieres, we were only allowed one layer of clothing. But I was left with my watch, which I thought was unusual and they never looked--they never asked us to take off our socks, so, and she-I don't recall having my feet felt or checked or anything like that. And I remember thinking then and afterwards, that it was a very sort of summary search and I didn't understand what the point of it was, because if I wanted to conceal something, I could have had something in my socks, or whatever. And, as I said, I was left with my watch, which I understand you're not to be left--you're not supposed to be left with any jewellery or any items on your body except for clothing. My--the rest of my things were put into a plastic bag, my jewellery and my other shirts and my shoes. And I was taken to a cell.

The search process described by the other women who gave evidence was generally in accord with the evidence of Ms. Bonfonti and Ms. McCarthy.

29.4.10. *An Emotional Reaction*

In her final question, Complainants' counsel drew from Ms. McCarthy her deep and emotional feelings about the experience. I am satisfied she was sincere and truthful in what she said although I do not share her view that the strip search was carried out for the purpose of intimidation and humiliation. Notwithstanding that, I do believe that it was, for Ms. McCarthy, as humiliating as she said:

> Q: And lastly, Ms. McCarthy, can you tell us--and I think some of it may be implicit in--in--in the way that you gave your evidence, but I'd like you to describe in words for us, if you can, how you felt or--or feel, or both, about the process of having been strip searched in the Richmond Detachment on the 25th of November 1997?
>
> A: At the time I felt very--I was very uncomfortable, and I felt humiliated by it and shortly after--perhaps in the new year of 1998, 1 was told--I was informed that only women had been searched, and that--I became very angry. So in addition to the--sort of the humiliation, I was also very angry and I really felt that it had been--it had been such a, sort of, a summary search that I didn't understand the purpose of it and felt that it was for the purpose of--of intimidation and humiliation. And--and I almost, really to be honest, I didn't realize the impact it had on me, and I have to admit I was really taken by surprise by my reaction today. I didn't anticipate that at all.
>
> Q: When you say your reaction, you're referring to your--
>
> A: My crying--
>
> Q: --reaction--
>
> A: --my tears, I didn't--I didn't anticipate that.

29.4.11. *A False Allegation*

With respect to Ms. Westergard-Thorpe, counsel for 44 RCMP officers devoted many pages of written submissions to her allegation that men had watched the strip searching of female prisoners. In their summation of Ms. Westergard-Thorpe's complaint, recorded at the close of their 15 page review of that complaint, with which review I am in substantial agreement, counsel said:

> The complaint of Alissa Westergarde-Thorpe that women were forced to disrobe in front of men, who were deliberately watching to punish them for protesting, is one of the most serious accusations that could be made in a case of this sort. It is completely false.

I agree entirely with both propositions. Ms. Westergarde-Thorpe has an anti-police bias that prompted recklessness on her part in the allegation she made. She acknowledged that she had chosen to be arrested on November 25 and, in doing so, willingly gave up her liberty for a period of time. She anticipated that her actions would result in incarceration for a period.

Ms. Westergarde-Thorpe said she saw men watching the strip searching of females just before she entered the Booking Room to undergo the same process herself. She said men watched while she was searched. She was asked why she didn't say anything to the guard who was about to search her, if in fact she had seen what she said she saw:

> I suppose because we'd been being punished by the police all day long and I don't think that it surprised anybody that there would be a bit of additional punishment for what we'd done. It seemed to me that we were physically punished on the site before committing any offences, by the violence of the Police and then while we were being held in custody, we were continually being punished for whatever imagined transgressions. And it seemed to us that probably this is just another thing that they were going to do to us and that there wasn't anything we could do about it anyway. You are in custody. There's not a tremendous amount you can do about some things that are done to you in custody. It doesn't matter whether they're constitutional or right or not. If you're in custody, they're going to be done to you.

That evidence, which I reject as being unsupported by the facts, clearly shows the agenda of this witness in presenting her evidence. While there may have been occasions when men were in the guard room momentarily and inadvertently while strip searching was taking place in the adjacent Booking Room, I reject completely her evidence that men stood and watched what was occurring in the Booking Room. There were never the number of male guards in that room that she suggested and to say as she did that they stood there drinking coffee while making their observations does not accord with the facts. While mistakes may have been made by officers and guards on duty in the cellblock over the 12-hour period from 11:00 a.m. to 11:00 p.m., it is my firm conclusion that they all acted with diligence and total commitment to meeting their responsibilities under difficult and trying circumstances about which they had no advance notice whatever.

My one qualification of substantial agreement with counsel's written submission is because of counsel's view that Ms. Westergard-Thorpe was not in the Prisoner's Telephone Room awaiting her turn to be strip searched. There is conflicting evidence about the use that was made of that room at that time which I have not been able to resolve but that does not detract from the conclusion I have reached about the veracity of Ms. Westergard-Thorpe's evidence. Finally, I reject any suggestion that the strip searches, under the circumstances that they were conducted on this day of protest, were a punitive measure directed at the protest activity that brought the women into custody.

29.5. Strip Searches of Female Prisoners

29.5.1. Section 8 of the Charter

The B.C. Civil Liberties Association and Complainants' counsel submitted that the strip searches of the female prisoners at the Richmond Detachment were unlawful and contrary to section 8 of the *Charter*, which reads:

> 8. Everyone has the right to be secure against unreasonable search and seizure.

The rights guaranteed in the *Charter* erect around each individual an invisible fence over which the state will not be allowed to trespass. The role of the courts is to map out, piece by piece, the parameters of the fence: *R. v. Morgentaler* (1988), 37 C.C.C. (3d) 449 (S.C.C.). To resolve this aspect of the complaint, I must consider the scope of the police power to breach the "invisible fence" and interfere with a person's privacy and dignity by way of strip search.

29.5.2. What is a reasonable search?

Section 8 of the *Charter* protects every citizen's entitlement to a reasonable expectation of privacy. Reasonableness in this context must be evaluated by balancing the privacy interests of the citizen against the state's interest in law enforcement: *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145.

The law is clear that warrantless searches, such as the strip searches conducted at the Richmond Detachment, will be presumed to be "unreasonable" for the purposes of section 8. This puts the onus on the RCMP to establish that the strip searches were reasonable. In *R. v. Collins* (1987), 33 C.C.C. (3d) 1, the Supreme Court of Canada said that, in order for a search to be reasonable:

1. the search must be authorized by law;
2. the law itself must be reasonable; and
3. the search must be carried out in a reasonable manner.

In view of my resolution, set out below, of the complaints regarding the strip searches, it is only necessary to consider the first criterion set out in *Collins*.

29.5.2.1. Search must be authorized by law

Counsel for the 44 RCMP officers did not identify any statutory basis for the strip searches of the female prisoners. Instead, Counsel submitted that the warrantless strip searches were authorized by the common law police power to conduct a search as an incident to a lawful arrest, to which I now turn.

29.5.2.2. Common law power to search as an incident to arrest

The police may search a person in connection with a lawful arrest, even without reasonable and probable grounds, as the right to search arises from the mere fact of the arrest. This power is based on the need for the police to protect themselves, the accused and the public, and to prevent escape by, and provide evidence against, the prisoner: *Cloutier v. Langlois* (1990), 53 C.C.C. (3d) 257 (S.C.C.); *R. v. Caslake* (1998), 121 C.C.C. (3d) 97 (S.C.C.). The power is an exception to the general presumption that warrantless searches are unreasonable: *R. v. Golub* (1997), 34 O.R. (3d) 743 (C.A.).

In order for a search to be authorized by the police power to search as an incident to a lawful arrest, the Supreme Court of Canada, in *R. v. Stillman*, [1997] 1 S.C.R. 607, set out three criteria that must be met:

1. the arrest must be lawful;
2. the search must be incidental to the arrest; and
3. the search must be carried out in a reasonable manner.

Before turning to those criteria, I wish to note that there are certain limits on the scope of the power to search.

29.5.2.3. Limits on scope of power to search

Although the police have the right to search as an incident to a lawful arrest, the exact scope of that power is not entirely clear. In *Cloutier*, the Supreme Court of Canada set out three propositions that limit the scope of the common law power to search:

1. This power to search does not impose a duty to search. Where police are satisfied that the law can be effectively and safely applied without a search, the police may see fit not to conduct a search. They must be in a position to assess the circumstances of each case, to determine whether a search meets the underlying objectives.

2. The search must be for a valid criminal justice objective, such as the discovery of an object that may be a threat to the safety of the police, the accused or the public, or that may facilitate escape or may be evidence against the accused. The purpose of the search must not be unrelated to the objectives of the proper administration of justice, such as, for example, to intimidate, ridicule or pressure the accused in order to obtain admissions.

3. The search must not be conducted in an abusive fashion and, in particular, the use of physical or psychological constraint should be proportionate to the objectives sought and the other circumstances of the situation.

A search will generally be invalid if it falls afoul of these criteria.

I now turn to the three prerequisites to a valid search incident to arrest set out in *Stillman*.

29.5.2.4. Arrest must be lawful

The police may only conduct a search as an incident to an arrest if the arrest was lawful. If the arrest was unlawful, the search will itself be unlawful: *Caslake*.

All but one of the female prisoners were lawfully arrested for breach of the peace pursuant to section 31(1) of the *Criminal Code*. The one exception was Ms. Muttray, who was arrested for obstructing a police officer. As her arrest was instigated by a VPD officer, over whom I have no jurisdiction, I can do no more than assume that her arrest was lawful, as the RCMP officers at Richmond Detachment undoubtedly did.

29.5.2.5. Search must be truly incidental to the arrest

Searches which derive their legal authority from the mere fact of arrest must be "truly incidental" to the arrest. That is, the officer must be attempting to achieve some valid objective connected to the arrest (such as protecting the police or the public, preventing the prisoner's escape or discovering evidence): *Cloutier*. The officer's belief that the search will further that objective must be reasonable in the circumstances: *Caslake*.

I accept that Cst. Watson believed a strip search would "eliminate the risk" of any harm coming to the police, the protesters or any other prisoners and that she was motivated to conduct the searches on the basis of safety concerns. That is a valid objective of the power to search in connection with an arrest.

I also accept that her belief was reasonable, thinking as she did that the protesters had come from a "riotous situation" involving a "confrontation with police." Given that knowledge, it was reasonable for her to conclude that safety might be an issue, particularly given that multiple prisoners were to be lodged in single cells.

In *Cloutier*, however, the Supreme Court said that the police have a discretion whether to search and implied that searches should not be conducted as a matter of "policy". The court also said that a police officer "must be in a position to assess the circumstances of each case" so as to determine whether a search meets the objectives underlying the search power. In *R. v. King* [1999] O.J. No. 565 (Ont. Gen. Div.), the court held that, because the searching officer had little information other than that the prisoner had been arrested for theft but nevertheless searched on the basis of policy, she was unable to assess the circumstances of the case before deciding to search. As a result, the search was not in pursuit of a valid purpose and was not authorized by the common law rule permitting search incident to arrest.

It is tempting to conclude that, because Cst. Watson generally conducted strip searches as a matter of policy, and because she was not in a position to assess the circumstances of each prisoner, she was not entitled to conduct a search. In my view, however, it would be unreasonable to conclude that she was not entitled to search, as the need to conduct a search increases when multiple prisoners are lodged in a single cell. It would be absurd to suggest that, in a mass arrest situation where the sheer volume of prisoners overtax police resources, the police are not entitled to conduct any search at all simply because, due to the exigencies of the moment, they were not apprised of all the relevant circumstances of each individual prisoner.

Cst. Watson's evidence was clear that her "zero tolerance" policy was particularly focused upon situations where multiple prisoners are detained in a single cell:

> Q: It's a zero tolerance policy from your perspective, correct? No risk—any risk is too much risk?
>
> A: *When you're dealing with more than one person in a cell, yes, sir.*
>
> Q: Well how is it, Officer, that you ever can eliminate any risk of any of these three things occurring, of somebody bringing in something that's contraband, or--or--or a potential weapon, or evidence secreted? How can you ever eliminate that risk and allow any--any person to walk into those cells without a strip-search?
>
> A: As I said, sir, the juvenile that went into cells was not strip searched because: a) *she was going into the cells by herself*. She was not being held, to my knowledge, for a long period of time and I did not feel the safety issue was as great a factor with her as it was with the other persons.
>
> Q: So there was no risk in your perspective.

A: There was a slight risk, but not as great a risk. (emphasis mine)

There is merit to her concern where multiple prisoners are involved. However, I believe a distinction must be maintained between the prison setting and police cells. There can be little doubt that a person may generally be strip searched immediately prior to commencing a sentence of incarceration in a correctional facility or penitentiary, as the dangers associated with the introduction of contraband into a true prison setting are self-evident. However, in the context of a police lockup, such as the Richmond Detachment, I do not believe that the mere fact of detention necessarily requires a strip search in every instance, even if multiple prisoners are held in a single cell. In my view, the police must be in a position to assess the circumstances of each case, as there will undoubtedly be cases where they need not resort to measures as intrusive as strip searching.

I accept that Cst. Watson was entitled to conduct a search of some type as an incident to arrest. Given the circumstances of the moment, it would be ludicrous to conclude otherwise. In any event, even if a search were not authorized by the common law power, the police had a duty to protect life and property and, therefore, some form of search would have been justified.

The critical issue is whether Cst. Watson was entitled to conduct a strip search. That falls to be decided on an assessment of the facts against the third criterion set out in *Stillman*; namely, whether the searches were conducted in a reasonable manner.

29.5.2.6. Were the searches conducted in a reasonable manner?

In determining whether the intrusion upon the privacy and dignity of the female prisoners was reasonable in the circumstances, I must consider whether strip searches must meet a higher standard of justification than frisk searches. Counsel for the 44 RCMP officers submitted that the law does not treat the two types of searches differently:

> Strip searches are merely a form of search incidental to arrest. While they are more intrusive than ordinary pat searches, they do not constitute a separate legal category

> of search subject to different, or more stringent requirements than other searches incidental to arrest.

I disagree. Although some earlier court decisions drew no distinction between frisk searches and strip searches (see, for example, *R. v. Morrison* (1987), 35 C.C.C. (3d) 437 (Ont. C.A.)), the law has since undergone some change. Indeed, strip searching has recently been characterized as one of the most "intrusive" manners of searching and one of the most "extreme exercises" of police power: *R. v. Flintoff* (1998), 126 C.C.C. (3d) 321 (Ont. C.A.). Though the common law allows the police to search as an incident to arrest, the degree of intrusion must be necessary and reasonable and in pursuit of a valid objective such as safety: *Cloutier*. The greater the intrusion, the greater must be the justification and the degree of constitutional protection: *R. v. Simmons*, [1988] 2 S.C.R. 495; *Flintoff*.

Given the above, I have no doubt that strip searches must meet a higher standard of justification than other, less intrusive types of searches, and I am satisfied that the strip searches conducted at the Richmond Detachment were far from justified.

I believe Cst. Watson's adherence to "zero tolerance" rendered any exercise of discretion that she thought she may have had almost meaningless. Unless there was virtually no risk at all, she was going to conduct a strip search, regardless of the impact on the privacy rights of the female protesters. That is the way she thought things were done at the Richmond Detachment. Certainly Guard Fraser understood that to be so. On that basis alone, I would conclude that the strip searches were not justified.

There is, however, another reason that leads to the same conclusion. Cst. Watson was not in a position to properly assess the circumstances of each individual, including the nature of the offence, because she was not given complete and accurate information. She was labouring under the impression that the protesters had come from a "riotous situation" involving a "confrontation" with police. She was not told that the protesters were students, many of whom had been voluntarily arrested through a "negotiated arrest" process, and that the majority of the arrests did not arise out of a "riot" or "confrontation". She was clearly misinformed in that regard. In my view, the information passed on to Cst. Watson seriously overstated the risk posed by the protesters and, as a result, she was unable to properly assess the circumstances of each case and weigh the risk of potential harm against the right of the protesters to be free from unreasonable search and seizure.

As to Guard Fraser, her evidence was crystal clear that she had no discretion whatsoever as to what type of search to conduct. Guard Fraser is not an RCMP member and I make no criticism of her in any way. Guard Fraser acted at the direction, and under the supervision, of the RCMP. She was not in a position to exercise discretion and she did not do so.

The strip searches conducted at the Richmond cells on November 25 were far too intrusive in the circumstances, and were neither reasonable nor necessary. In my opinion, a frisk or pat down search would have met legitimate safety concerns and that is precisely the type of search to which the males were quite properly subjected. I conclude that the criteria stipulated in *Stillman* regarding the common law power to search as an incident to arrest were not met, with the result that the strip searches were unreasonable. As noted, there is therefore no need for me to return to a consideration of *Collins*.

The strip searching of the female prisoners at the Richmond Detachment was both inconsistent with the *Charter* and inappropriate to the circumstances.

29.5.3. Responsibility for the strip searches

Major responsibility for the events at the Richmond cells on November 25 must rest with the planners who failed to advise Richmond Detachment of the role it would play that day. With all the information police had about protesters' plans, they should have known that there would be arrests, and they could have expected there to be many. With minimal prisoner handling facilities at UBC, the planners knew that arrestees would be taken to Richmond. That was contemplated by the plan formulated by Cpl. Harrison but which was never brought to the attention of the Richmond Detachment, neither by the Security Steering Committee for APEC, which apparently had given approval to it, nor by Cpl. Harrison.

As it happened, the first protesters were arriving at Richmond Detachment when the call came from Command Centre, advising the detachment of their expected involvement. If the detachment had been brought into at least the periphery of planning, and given a briefing about what was expected to happen on November 25, I am convinced that there would have been a plan in place for the appropriate handling of the volume of prisoners who arrived on its doorstep, and that would have included a search policy suitable to the occasion.

29.6. Were Prisoners Held in Custody for an Excessive Amount of Time?

29.6.1. Releases were Orderly and Reasonable

The last prisoners were booked into cells at 5:10 p.m. A release process could not have begun before then. All admissions had to be documented and surrendered items properly listed and secured. To have failed to follow that process with every prisoner could have led to future difficulties for the RCMP. Given the limited space and the heavy demand placed upon staff, the booking process could not have been completed at an earlier hour.

The release process started at 7:47 p.m. In the meantime, some prisoners were escorted, one by one, to make telephone calls. Between 5:28 p.m. and 7:32 p.m., 19 APEC prisoners were escorted to and from the telephone room. During the same time frame, the guards prepared and served supper.

The release process was documented and completed at 11:31 p.m. It took about six minutes for each individual. The process involved was explained by Insp. Speevak and I believe that the release process was carried out in an orderly and reasonable manner.

Considering the complaints about a lack of opportunity to make phone calls, I do not believe it was unreasonable to give attention to that requirement as soon as the last prisoner was booked in, nor to take time to prepare and serve supper to the prisoners, many of whom had been in custody without food for several hours.

The release process began 15 minutes after the last prisoner making a telephone call was returned to the cells. The Watch Commander then on duty had been instructed to begin the release process at 9 p.m. He apparently made a decision to move up the time frame based on the time it took to book the prisoners into the cells. Considering that the evening hours had arrived, I believe that was a wise decision.

29.6.2. Determining the Timing of Releases

The complaint is that the release process should have commenced much sooner. I have rejected the suggestion that it could have begun before 5:10 p.m. Command Centre had decided that the releases should begin at 9 p.m. It appears that the decision was made by Insp. Moulton after discussions with colleagues at the Centre. It was communicated to Insp. Speevak when he spoke on the telephone with Insp. Moulton at 5:53 p.m. Until that time, it was Insp. Speevak's understanding that Command Centre's preferred hour of release was 8 p.m.

Insp. Speevak deferred to Command Centre and I believe he had good reason to do so. He did not have any background information as to how the arrests occurred, the justification for the arrests or any other relevant details, whereas that information was all available to the officers in Command Centre. Insp. Speevak acknowledged that, technically, it was his decision but he received instructions from Command Centre which he accepted and agreed with once Insp. Moulton had explained the rationale.

Insp. Moulton explained the reasons for the 9:00 p.m. release hour:

> A: I believed that in relation to the grounds of release, that certainly there was no question about the primary ground as we were not intending to deal with charges. In

> respect to the secondary ground, it was my belief, given the way the day had played out, in fact, the way the previous week--days had played out, that there was very good likelihood that persons who were released from Richmond Detachment would then return either to UBC where, at this point in time, there was still a crowd, or would make their way down to the other--the downtown demonstration become part of that. Based on my understanding and my view of the videos, that the persons that were, in fact, arrested, were, perhaps to generalize, but, were the more committed of the demonstrators, that the likelihood of their taking a further role in further breaches of the peace or obstructions of the Police Officers was entirely likely and that by waiting until 9:00 that that likelihood would expire and that there would be no further concern.
>
> Q: All right. Now, I take it you didn't have any specific information about any one of these forty-odd people in custody, that any particular individual had a plan to go down to Oppenheimer Park?
>
> A: No, that's correct. Although we did have earlier intelligence that the crowd at UBC had discussed about getting on buses to go join that demonstration.

The other demonstration to which Insp. Moulton referred was one in downtown Vancouver beginning at Oppenheimer Park. It was aimed at APEC but separate from the event earlier in the day at UBC. The information Insp. Moulton had when he talked to Insp. Speevak at 5:53 p.m. was that there were approximately 1,000 people at the Oppenheimer Park demonstration, which at that time was arriving at the Art Gallery in downtown Vancouver. Insp. Moulton said he concluded that the likelihood of the prisoners at Richmond again becoming part of a disturbance outweighed any need to release them. He said the information available to him at that time was that the protest would be over by 9 p.m. The Inspector was asked what he feared if the Richmond prisoners were released before then:

> A: My belief was that they would join either the--the continuing--or such crowds that were left at UBC or would join the crowd then at the Art Gallery or the Oppenheimer Park where, depending on timing, and participate in those demonstrations and perhaps incite them to assume a problem as--as had earlier existed at UBC at which they had been arrested.
>
> Q: What do you mean, "incite them to a similar problem". What--what specifically did you fear that the prisoners would do or might do?
>
> A: That they would take action against the police perimeters or coordinates and jeopardize the VIP security that was in place.
>
> Q: And why did you fear that those prisoners would do that?
>
> A: They had demonstrated that earlier in the day that they would take those actions.

He was asked whether he had tried to obtain specific information about specific individuals, in order to make decisions about their time of release. He replied that he did not have such information and very likely would not have been able to obtain such information before 9 p.m.

29.6.3. Breach of the Peace

Because nearly all of the prisoners were taken into custody for breach of the peace, and were not charged with an offence, there was much discussion about the length of time they should remain in custody.

An arrest for breach of the peace is an adjunct to the criminal law. It is a form of "preventive justice" that does not result in a conviction. A person arrested for breach of the peace should be detained for 24 hours at most: *Lefebvre* (see Chapter 28).

This is not to suggest that the detention should, in normal circumstances, last as long as 24 hours.

The RCMP National Operational Manual provides:

> F.5 Persons Arrested for Breach of the Peace
>
> F.5.a. A breach of the peace under Sec. 31, CC [Criminal Code] is conduct contrary to public order.
>
> 1. The section does not create an offence, but sets out a specific power to arrest which may be used in a preventive manner.
> 2. Arrests under this section are to be used as a last resort and only when there is no other alternative to an arrest for the offence being investigated.
> 3. A person arrested under Sec. 1, CC must be released as soon as the need for detention no longer exists.

Both Insp. Moulton and Insp. Speevak were of the view that, under the circumstances as they existed on November 25, the 9 p.m. release time would accord with that policy.

Counsel to the 44 RCMP officers submitted that the RCMP were authorized by both section 31(1) of the *Criminal Code* and the common law to hold the prisoners in custody until the risk of them renewing a breach of the peace or committing a further breach had subsided.

In contrast, Complainants' counsel submitted that there was no evidence to indicate that the prisoners would become involved in any further breaches of the peace and that keeping the prisoners in custody until after the rally at Oppenheimer Park violated their right under section 9 of the *Charter* to be free from arbitrary detention.

The BC Civil Liberties Association submitted that, by failing to release the prisoners, the RCMP prevented them from attending the evening rally in breach of their right to freedom of expression under section 2(b) of the *Charter*.

The position of Commission Counsel was that, on the basis of the *Criminal Code* provisions as well as RCMP policy, the RCMP were required to release the prisoners at the Richmond cells as soon as practicable, once the need for detention no longer existed. I believe that is an accurate assessment of the requirements of the law.

The officers on duty over the supper hour, including the Watch Commander and those working in the cell block had limited knowledge of the overall picture. They saw it as their responsibility to facilitate the prisoners' telephone calls as soon as possible and to serve supper to the prisoners and they carried out those tasks before beginning the release process. In my judgment, it was reasonable for them to proceed as they did and I do not fault them. Having attended to supper and the telephone calls, they then began the releases "as soon as practicable." Although the release process extended from 7:47 p.m. to 11:31 p.m., it had to be done in accordance with standard RCMP procedure and, like the booking in process, could not be completed quickly. I find that the RCMP conduct in holding the prisoners until the evening of November 25 was neither inconsistent with the *Charter* nor inappropriate to the circumstances.

29.6.4. Certain Releases were Troublesome

There is one aspect of the release procedure, however, that concerns me although it was not directly referred to as part of this category of complaint as neither of the two women affected were complainants, although they both gave evidence. Ms. Worton was released at 10:05 p.m. Since noon she had been clothed in a paper suit that had been given to her when her own clothes were soaked by pepper spray. When she was booked out she was given the opportunity to change into her clothes, but they were too coated with pepper spray to allow for that.

Ms. Worton said that, as she was being released, she told an officer that she was from Victoria, did not know her way around, did not know where she was and needed directions to a bus stop. She testified that she did not receive a positive response to her request for assistance:

> I'm stuck in Richmond, and the fact that they're sending me out into the streets late at night wearing a white jumpsuit, of all things, with little to no money, and to the best of my knowledge, no support, because I didn't know there were people out there waiting for us. They might have known that, but I didn't know that, and they certainly didn't tell me.

Ms. Worton said that, luckily, there were some people waiting outside who drove her to where she needed to go and helped her out. She said "[b]ut it certainly wasn't the police."

Ms. Thorburn had also been in a paper suit all day and had the misfortune at some point of having it torn. She said she was unsuccessful in her attempt to obtain a replacement and she was released in the torn suit. Fortunately, she had telephoned her father who was able to come and take her home. It was not until she arrived home about 11 p.m. that she was able to change out of her torn paper suit.

I will address this matter further in my recommendations.

30. CLOSING OBSERVATIONS

I have some observations to make before moving to my recommendations.

- In Chapter 12 of this report I described police performance that did not meet an acceptable and expected standard of competence, professionalism and proficiency.
- In other chapters I described individual instances of police conduct that was inappropriate to the circumstances and, in some cases, inconsistent with respect for the fundamental freedoms guaranteed by the *Charter of Rights*.

There is a clear connection between the two. Most instances of inappropriate police conduct were the direct result of the unacceptable level of police performance described in Chapter 12.

The question then remains: What can explain the instances of substandard RCMP performance reviewed in this report? In this chapter I will review my findings regarding police performance and police conduct, and then attempt to answer that important question.

30.1. Police Performance

Many of the examples of substandard performance reflect failures in the planning process. They are presented here in chronological order, as they played out in the events of November 25.

30.1.1. Briefings and Late Buses

- Inadequate instruction to bus drivers who were to transport their passengers to the UBC campus on the morning of November 25 for a 6:00 a.m. briefing. The result was the last minute assignment, to key positions, of people who were not adequately prepared for their roles and who were not properly integrated into the command structure for that day. At both Green College and Gate 6, officers who could have supported each other's efforts instead acted in isolation and sometimes at cross purposes because they were unaware of each other's presence and their respective roles.

30.1.2. The Open Space in Front of Green College

- Failure to realize that the grounds of Green College located outside the secure zone were an obvious gathering place for those residents of Green College who had previously indicated a desire to protest, with the result that no contingency plans were in place to address the presence of protesters at that location.

30.1.3. Noon March to the Fence

- Failure to have anyone in a command role at the well-publicized noon rally who was aware of the protesters' planned civil disobedience and was in a position to realistically evaluate late-breaking information of dubious credibility about the expected actions of the protesters.

- The last-minute decision to give protesters access to the security fence, which was constructed in a woefully inadequate manner, in spite of long-standing police intelligence and well-publicized information that the protesters had planned, as an act of civil disobedience, to symbolically bump into the line of police officers that they expected to find between them and the fence.

My inability to determine who made the all important decision to allow protesters to have unobstructed access to the security fence tells a great deal about the state of readiness of the police to meet the challenges of the day. I will always believe that, but for that decision, based on dubious information, the events on campus from noon until 4:30 that afternoon may well have been non-violent throughout, though boisterous, noisy and challenging for the police. It was the violence that broke out at the flagpole at noon that set the stage for many of the subsequent events that unfolded over the remainder of the afternoon.

- The recruitment of Deputy Site Commanders during the second week in November, who had no background whatever in APEC planning, and giving them major decision-making roles in the front line on campus on November 25 without adequate involvement or training to prepare them for the senior roles assigned to them.

- Placement of ultimate security responsibility for the major noon hour protest rally, as well as all other security operations on campus that day, with a senior officer who was freed from his daily police duties to come full time to the task just 10 days before November 25, while the senior officers who had planned the security operation over a lengthy period of time stood aside, outside of the chain of command.

  The decision to divide and separate the planning from the operational side of the policing responsibility for this event was an ill-advised decision.

- Failure to plan for effective leadership at the flagpole hot spot during the well-publicized noon rally. Supt. Thompsett's absence should have been contemplated, given his need to be in the immediate vicinity of the 18 world leaders for whose safety he held responsibility.

  Placing command responsibility at that critical event in the hands of two otherwise competent and sound officers, who had been brought into the APEC circle just days before, was sheer folly.

- Lack of an approved contingency plan setting out the RCMP response to potential protests and demonstrations on campus on November 25.

Instructions for the preparation of such a plan were given only 12 days before the event, to an officer with no background whatever in APEC planning. With insufficient time to have the draft plan considered and finalized, it was never adopted or used.

30.1.4. *Blockage of the Exit Routes*

- Absence of a tactical plan to ensure the exits from campus remained secure and open while APEC leaders were on campus, and to address the potential blockade of all exit routes from the Museum of Anthropology. This was despite police information gathered well in advance that such a blockade by protesters was entirely possible.

- Confusion and chaos in the APEC Command Centre when it became apparent that all exit routes were blocked, such that protocol went out the window and those with responsibility scrambled in all directions to find a last-minute solution.

- The relieving of Supt. Thompsett of his command responsibility to clear Gate 6 immediately after he had set in motion a process to meet that responsibility, and the assumption of that responsibility by Command Centre, 45 minutes before the scheduled departure of the world leaders, amidst panic and uncertainty at the Centre as to how the exit could be cleared.

- The dispatch of S/Sgt. Stewart from Gate 3 to clear Gate 6 within six minutes, giving him four minutes from his arrival at Gate 6 to accomplish the task.

30.1.5. *Involvement of the Local RCMP Detachments*

- Exclusion of the UBC Detachment from any meaningful involvement in the security planning for the leaders' meeting on campus until shortly before the event, and then, only on the initiative of the NCO in charge at that Detachment.

The result was that the NCO in charge at the UBC Detachment was left to make decisions that had serious implications for the total security package being delivered by the RCMP on campus on November 25, without the benefit of the background knowledge held by senior commissioned officers in command roles.

- Failure to notify the Richmond Detachment to be ready to receive protesters arrested on campus on November 25, in spite of the fact that the RCMP planners had decided and recorded that the Richmond cells would be used for that purpose.

30.2. Police Conduct that was Inappropriate or Inconsistent with Charter Rights

Certain police conduct contributed to the appearance of a police crackdown on student demonstrations at the APEC conference but in fact was the direct result of the inadequate police performance I have identified above. That conduct included the following:

30.2.1. The Singh Arrest on November 24

Had the UBC Detachment been properly integrated into the security planning process, I believe that Mr. Singh would not have been arrested on November 24 or at any other time for the November 7 megaphone incident. Had the UBC Detachment been required to consult on its plan to eliminate Mr. Singh from campus on November 25 with wise and seasoned heads with full knowledge of the background of the leaders' meeting, I believe that the plan would never have been implemented.

30.2.2. The Removal of the Tibetan Flag

My comments immediately above with reference to the arrest of Mr. Singh apply equally here. The UBC Detachment drove the initiative to have the flag removed and it should not have been in a position to do so. The detachment should have been required to consult on its plan to remove the flag with senior officers, with full background knowledge, who surely would never have succumbed to the pressure applied by the late night visitors to the UBC Detachment and the follow up by the Chinese Consulate.

30.2.3. Removal of Protest Signs Outside of Green College.

Had the calibre of the planning for the leaders' meeting on campus and the delivery of the security package for that event been of the quality that would have been expected, the major gaffe - the failure to recognize this obvious protest site - that gave rise to the complaints relating to Green College would never have occurred.

30.2.4. The Clearing of Gate 6

Nowhere in the entire litany of events reviewed in this report is the inadequacy of the police planning and delivery of the security package for the leaders' meeting more apparent than in the position the police found themselves around 3:00 p.m. on November 25 when they realized that all the exit routes had been blocked and they had no contingency plan for addressing the resulting crisis. The unnecessary pepper spraying of protesters was a direct result of that inadequacy.

30.2.5. The Arrest of Mark Brooks

This was a precipitous arrest made in an atmosphere of crisis, directly attributable to the chaos that resulted from inadequate police planning to ensure the orderly and safe exit of the world leaders.

30.2.6. The Strip Searching of All Female Protesters at the Richmond Cells

Had the Richmond Detachment been notified in advance of what to expect on November 25, I am satisfied these complaints would never have arisen. I have no doubt that Insp. Speevak would have provided leadership in preparing for what could unfold at the detachment on November 25. That would inevitably have led to a consideration and discussion of procedures to be followed on the arrival of prisoners from UBC, including the method of search to be conducted. I cannot imagine that strip searching the student protesters would have been considered necessary, unless unforeseen circumstances were to arise. Certainly the differential treatment of male and female prisoners would not have occurred.

30.3. Police Conduct that was Justified and Necessary

There were, of course, instances of public confrontation between police and protesters where police actions were justified and necessary to preserve or restore the peace. Examples include:

- the pepper spraying and arrests at the time of the collapse of the fence at the noon rally;
- the pepper spraying and arrest of Mr. Malmo-Levine at the flagpole climbing incident;
- the arrest of Mr. Oppenheim; and
- the second arrest of Mr. Singh.

The police had a duty and responsibility to initiate the latter arrest given the contemptuous disregard for the rule of law by Mr. Singh, who took refuge behind that same rule of law when he complained to this Commission, successfully as it turns out, that his initial arrest earlier the same day had been inappropriate.

30.4. Improper Federal Government Involvement

The federal government's role in the removal of the tenters from the grounds of the Museum of Anthropology on November 22 was one of two instances of its improper involvement in the RCMP security operation. I am satisfied that it was because of the government's intervention that the tenters were removed that evening. Were it not for that involvement, the contrary view of Site Commander Thompsett would have prevailed. As it happened, his view did not carry the day because of the acquiescence of other RCMP personnel, principally Supt. May, who had succumbed to government influence and intrusion in an area where such influence and intrusion were inappropriate.

The other instance of improper and inappropriate federal government involvement in the RCMP's provision of security services was with respect to the size of the demonstration area adjacent to the law school. In that case, the government's efforts did not prevail due to the intervention of others, including Site Commander Thompsett, on behalf of the protesters. Had those intervenors not prevailed, the security challenges the RCMP faced on November 25 may well have been increased.

30.5. Some Answers

What can explain the police performance reviewed in this report that failed to meet an acceptable and expected standard of competence, professionalism and proficiency and which, in many instances, resulted in inappropriate police conduct that gave the appearance of a police crackdown on demonstrations at UBC?

I believe there are two answers to that question.

30.5.1. Separation of Planning & Operations

The experts' evidence, recorded in Chapter 5, that successful policing of a public order event requires that those in command at the event must have been intimately involved in the planning stages is compelling. Most of the work is done in the planning stages and those who do that work have the background and experience to effectively put the plan into action on the day.

In my judgment, the division of roles that occurred here is a major reason for the failure of the policing services delivered on November 25 to meet an acceptable and expected standard of competence, professionalism and proficiency. Insp. Dingwall, who had been second in command for the planning of the event on a full time basis, but was outside the chain of command on campus on November 25, acknowledged - with obvious reference to his two-year involvement - that his knowledge base about APEC "whether you're talking in general or specifics was different" from that of Deputy Site Commanders Killaly and Edwards, who had been brought in just days before the event.

It may be that there are alternative models to the total integration recommended by the experts who testified and if so they should be explored. Certainly the model of total division that was followed in this instance was a failure.

30.5.2. Failure to Anticipate Events

The RCMP and the VPD were the Security Directorate for the ACCO planning team headed by Mr. Vanderloo. Supt. May had his office in the same downtown Vancouver building as ACCO. He was included in all ACCO directors' meetings. In addition, Supt. May, or Insp. Dingwall as his deputy, attended all ACCO coordinating committee meetings. I have repeated that background from Chapter 5 as it brings into perspective the following evidence of Mr. Vanderloo:

> Q: Were you given information about the kinds of protests that could be expected at UBC for the Leader's meeting?
>
> A: Yes, over the course of our preparations - although I was never privy to any of the threat assessment studies because of their security classification - Wayne May would make references to that. The--we were conducting our planning for 95% of the time on the basis that a threat assessment was actually, relatively low. This was even indicated to us by the university that they expected some demonstrators. The demonstrators, I think, were well known to both sides, but the numbers were such that we didn't anticipate tremendous problems. Towards the end, our level of concern went up. The tent city, I forgot the name of the area, right now, on the main boulevard there, but that came as a bit of a surprise.
>
> Q: And what were your concerns about that?
>
> A: Well, it just came as a bit of a surprise because it seemed to indicate a level of protest that could be higher than the threat assessments that we had received.
>
> Q: And when did you learn about that?

A: Probably about, I am not sure about exact time, but three weeks before. I may be slightly off in that but around that time frame.

Q: So when you said that 95% of the time you were functioning as if the threat assessments were low; the other 5% was the last three weeks of your planning process?

A: Yes. That's when sign of student activity appeared to be higher than what it had been before.

Q: Were you advised that the threat assessments had changed in any way from the previous ones that they had told you about?

A: There was more activity and I presume that the RCMP was preparing for that greater level of activity. In terms of changing our own logistical arrangement, it had no impact.

I conclude that, as Supt. May and his planning contingent prepared for the APEC leaders' meeting, they conducted themselves pretty much on the same basis as Mr. Vanderloo and his colleagues with respect to his responsibilities at ACCO. If the genuine concern that ought to have been present on the part of the police was indeed there, it came late in the day. For instance, the flimsy construction of the security fence does not evidence any appreciation that substantial and large scale demonstrations were to be expected. Further, Insp. Dingwall's inquiry on November 9 as to whether an officer had been found to prepare a contingency plan to deal with potential problems that could arise on November 25 was alarmingly late in the planning spectrum. Still further, had there been an appreciation of the extent of the opposition to APEC that was building on campus, as there certainly should have been several weeks before the event, surely steps would have been taken to assemble the Quick Response Teams much earlier than one week before the event and arrangements made for members to do some training together so they could perform as a coordinated group.

All signs indicate that the police were in step with the pace described by Mr. Vanderloo. Specifically, for 95% of the time they did not anticipate tremendous problems. Their level of concern did not rise until "towards the end".

The last three weeks were either not effectively used by the police or, more likely, there simply was not enough time remaining for them to achieve a high state of readiness for November 25.

30.6. Independence of the Commission Chair

In the closing paragraph of its written submission the B.C. Civil Liberties Association states:

> We recommend that the role of the Chair of the Commission - currently occupied by Shirley Heafey - be considered, clarified and, if necessary, constrained. It is entirely unacceptable for a Chair of the PCC to attempt to micro-manage panels or to attempt to influence their proceedings or outcomes. This is all the more so in circumstances such as the present hearing where the Prime Minister, to whom the Chair ultimately owes her job, has a direct and personal interest in the outcome of the proceedings.

In support of that position the Association points to previous proceedings with respect to the 52 complaints that I have considered in this report. I was neither part of, nor know anything of the details of, that previous proceeding. What I do know is that, in the 31 months that I have been on the job with respect to this assignment, there has been absolutely no attempt to micro-manage me nor has there been any attempt to influence the proceedings over which I have presided or the outcome of the hearing either by the Commission chair or anyone else.

Since commencing this assignment I have met with the Chair on one occasion only. On that occasion, the work of the Commission was reviewed in a general sense since I had only become an alternate member of the Commission in late December 1998. There was no reference whatever to the specifics of this proceeding. I have given progress reports to the Chair with respect to timing on three or four occasions, through telephone calls that I have initiated to her for that reason only. The substance of the hearing has never been discussed. That being my experience, I am not in a position to embrace the Association's recommendation.

30.7. Acknowledgement

I acknowledge with appreciation the assistance, throughout this assignment, of Scott Smythe and Leonard Doust, Q.C. of the Vancouver office of McCarthy Tétrault LLP as legal advisors to the Commission and, over the past 13 months, the services of Administrative Assistant Joanne Palmer of Victoria and Lawyer/Editor Kathleen Keating of Vancouver.

30.8. Final Comments

It is inescapable that in most instances where I have found police conduct to have been either inappropriate to the circumstances or inconsistent with *Charter* rights, the primary responsibility rests with those who held key roles in security planning for the APEC conference. That may go to the highest level at RCMP Headquarters in Ottawa. This seems to have been the source of approval, if not direction, that security services on November 25 would be delivered by officers who were, at best, on the periphery of the two-year planning process, while those intimately involved in that process were out of command from the moment the APEC conference opened.

That division, coupled with the inadequacy of the background knowledge and preparedness of those placed in the command structure on November 25 goes a long way toward explaining why the events of that day had the appearance of a police "crackdown" on demonstrations at the APEC leaders' meeting.

The decision to delegate the two most senior roles in the planning structure - both Federal Security Co-ordinator and Division Operations Commander - to one man, Supt. May, was probably not prudent. The customary division of roles had allowed for sharing of responsibilities and for accountability. If there were good reasons to combine the roles it probably was not wise to introduce this innovation in the context of such a critically important and large-scale policing assignment.

This was the largest security event undertaken in RCMP history. Given the substantial shortcomings in the planning and delivery of police services which so prominently figured in the sad events of November 25, it is apparent to me that there may well have been a role for senior personnel in Ottawa involving themselves in exactly what was going on in preparing for this big day on Canada's west coast.

I do not move responsibility for what occurred far from the top. For example:

- I have found that S/Sgt. Plante made some decisions that ought not to have been made. The real culprit was the source that allowed him, in isolation, as NCO in charge of the UBC Detachment, to make serious decisions of that kind.

- I feel very much the same way about the involvement of S/Sgt. Stewart and those on site with him at Gate 6. He never should have been placed in the position of having four minutes to clear the road. Given the pressure he was put under, he made some unfortunate decisions but far more culpable, in my view, are those in positions of responsibility who allowed the Gate 6 events to develop and unfold as they did.

- The unacceptable strip searching that went on at Richmond detachment is a similar situation. I fix major responsibility for that occurrence on those with the responsibility, which they neglected to meet, of notifying the detachment of the role assigned to it on November 25. I thought Cst. Watson was a very good police officer who should have been afforded discussion with and guidance from senior detachment officers about the procedures for the day rather than unexpectedly being thrust into a near chaotic situation and left to deal with it.

- I feel very much the same way about the undertakings that the tenters were required to sign to gain their release. Considering the scope of the assignment, the planning process should have allowed for the involvement of much more senior personnel and advice from legally trained persons.

Supt. May acknowledged that he had on many, many occasions answered questions at the hearing with the response: "I do not recall." Frankly, I was surprised that this was his answer to a number of questions which I thought he would have been able to answer. I reject, however, the suggestion of Complainants' counsel that he was not honest in some of his answers. On the contrary, I believe him to be an entirely honourable man whose performance on the occasion of his APEC assignment, for whatever reason, did not meet an acceptable and expected standard of competence, professionalism and proficiency.

I formed the same opinion of the honour and integrity of Insp. Dingwall. He made mistakes on November 25 and showing up on campus in civilian clothes, believing he held command responsibilities at that location on that day, was likely the first of them but I reject completely the suggestion of Complainants' counsel that he gave false evidence to the Commission.

I have identified constables involved in conduct not appropriate to the circumstances in respect of the first arrest of Mr. Singh and the arrests of Mr. Doucette and Mr. Groebner. I believe those officers to be sound and effective members of the RCMP who, under pressure and in the heat of the moment, acted inappropriately. I do not consider their conduct as requiring censure.

I heard the evidence of approximately 90 members of the RCMP. Most officers in the field met their responsibilities in an entirely satisfactory manner, notwithstanding the difficult situations they faced, due to a large extent to the planning shortcomings over which they had no control. I am of the view, based on my assessment of the calibre of an overwhelming number of the officers who gave evidence, constables, NCOs and commissioned officers alike, in whose hands the future of the RCMP will substantially rest, that what occurred in preparing and delivering police services on this occasion will almost certainly not be repeated, particularly if there is adherence to my recommendations in Chapter 31.

There is evidence in the country to indicate that the RCMP has learned considerably from the events of November 25, 1997. That being so, and if that learning process continues in the wake of a study of the facts I have found and recommendations I make, I am satisfied that the Force, under carefully selected, competent leadership, will be in a position to police future public order events in Canada in a satisfactory manner.

While something went very wrong on November 25, 1997, something is going on that is very right and that is the recruitment of men and women into our national police force who fit the description of "Canada's finest." I was highly impressed with the calibre of those entering the service. The events I have described in this report may never be erased but it is my belief that they will, in time, be overshadowed by the high calibre of service that those who wear the Royal Canadian Mounted Police uniform are capable of and will surely give to this country.

31. RECOMMENDATIONS

The Vancouver APEC conference was an extraordinary event in Canadian policing but the evidence is clear that police in Canada and around the world will face increasing challenges as they are called upon to police international gatherings that attract growing dissent. Their role is to protect government leaders and officials and also to safeguard citizens' rights to lawful protest. As I have quoted Mr. Justice Doherty saying, in the *Brown* case: "We want to be safe, but we need to be free."

The recommendations I make are focused on the policing of public order events, given that the 52 complaints arose in that context. In many respects, however, the findings of fact that I have made in this report speak for themselves and do not require specific recommendations in order to point the way to a more competent, professional and proficient delivery of policing services at public order events. An obvious example is the need for contingency plans for eventualities that it is reasonable for the RCMP to anticipate.

31.1. Policing Public Order Events

31.1.1. Opportunity for protest

When the RCMP is called upon in future to police public order events, the leadership of the Force should ensure, that:

- generous opportunity will be afforded for peaceful protesters to see and be seen in their protest activities by guests to the event; and
- no attempt will be made to use a university campus as the venue for an event where delegates are to be sequestered and protected from visible and audible signs of dissent.

31.1.2. Integrated command structure

In preparing to police a public order event, the RCMP should adopt an integrated or similar command structure that would not cause the difficulties that were presented by the sharp division of the planning and operational responsibilities seen here. The work of policing such an event takes place in very large part during the preparatory period and those who are in command during the event must have had involvement at that stage. There must be continuity of personnel. In that way, those who are charged with responsibility for policing the event and for making decisions that will inevitably have to be made under pressure and in short order, will be well equipped for their task.

31.1.3. Separation of roles

Roles and responsibilities are divided among various positions in the command structure so as to provide for checks and balances and accountability. When one position reports to another, those positions should never be filled by the same officer.

31.1.4. Policy and Training

A current policy addressing the methodology for policing public order events should be formulated by the RCMP and a comprehensive training program for senior personnel interested in pursuing leadership roles in the policing of such events should be instituted.

31.1.5. Quick response teams

While Quick Response Teams are ad hoc in nature, when they are to be assembled for an approaching public order event, they should be in place for sufficient time to allow for group instruction and training in the field so that they are well equipped to meet their responsibilities as a cohesive unit.

31.1.6. Briefings

Briefing of police personnel assigned to duties at a public order event should be a priority so that those delivering services will understand how their responsibilities relate to the total operation. With proper briefing they will be well aware of the time and location of anticipated occurrences, arrangements made to control demonstrations, proposed arrest procedures, and available facilities for holding those to be incarcerated and any other matters that will allow for a more competent performance on their part.

31.1.7. Legal support

In planning for policing a public order event, legal advice should be made available to officers charged with producing documents and policies that could impact on *Charter* or other rights of citizens. In some instances it will be Crown Counsel who will be most appropriate to fulfil this role; in other instances a Department of Justice lawyer should be assigned to assist.

31.1.8. Record keeping

Following completion of a public order event there should be a designated officer who has been intimately involved in the event charged with the responsibility to compile a full file of all matters relating to the planning and delivery of the police services for the event. There should be no need to reinvent the wheel on each and every occasion. Within that file should be all operational plans prepared for the event. These files should be stored either at division or national headquarters as the case may be and personnel in senior positions at public order events should be made aware of the availability of that material.

31.1.9. Relations with protesters

The RCMP should continue to follow, and enhance where appropriate, its existing open door policy of meeting and working with the leadership of protest groups, well in advance of a planned public order event, with a view to both police and protesters achieving their objectives in an environment that avoids unnecessary confrontation.

31.1.10. Warning to protesters

Before taking action that could result in physical confrontation, police should make all reasonable efforts to warn protesters of the duty then resting with the police (such as, to clear a roadway); the steps they intend to take to fulfil that duty; and what actions the protesters should take to allow the police to fulfil that duty and to allow the protesters to avoid arrest. Once the warning has been given, the protesters should be given a reasonable opportunity to comply before the police take further steps.

31.1.11. Body search policy

RCMP policy with respect to body searches of persons in custody, whether formulated at the national, division or detachment level, should record the need for attending officers to take into account, when deciding the type of body search to be conducted, all relevant factors, including the circumstances that gave rise to the arrest and that will involve, when the arrest has been made at a public order event, the subject matter of the event, its location, the role of civil disobedience and the extent of violence involved, if any.

31.1.12. Release of prisoners

When releasing prisoners from custody, the police should consider the circumstances of prisoners who are particularly vulnerable, as Ms. Worton was, especially when they are being released late at night and a considerable distance from the place of arrest.

31.2. Public Complaints Procedure

31.2.1. Availability of a summary process

The procedure followed in this matter was lengthy, complex and expensive. There should be provision for taking evidence by affidavit, where that is appropriate. There should also be available a summary procedure, similar to that provided by Rule 18A of the British Columbia Supreme Court rules, for use in appropriate cases.

31.2.2. Granting of Complainant Status

The existing complaints process is both wide and generous in terms of who will be accepted as a complainant and the rights of participation in a hearing afforded to those who are accepted as complainants. Any member of the public, whether or not that person is personally affected by the conduct at issue, may make a complaint and receive the benefit of those rights of participation. Travel and living expenses can be allotted to complainants and their counsel. Unquestionably, these broad and generous rules contributed to the long and expensive hearing just concluded. I recommend a review of the existing process with emphasis on the basis on which complainant status is granted. One model for consideration is the *Police Act* (British Columbia) which provides for summary, expeditious and limited procedures in appropriate circumstances.

31.2.3. Separation of Functions

The B.C. Civil Liberties Association takes the position that the current statutory structure fails to ensure clear separations between participants in the process who have different functions. It points out that the Commission Chair has the power, either by statute or commission policy, to lay complaints; to choose whether to proceed by investigation, review or hearing; to set the Terms of Reference for a panel; to appoint a panel; to sit on a panel; and to edit and finalize review reports. The Association believes that what they describe as "this lack of institutional independence" of panels from the Commission Chair is so significant as to possibly impede the fairness and impartiality of tribunals and that future inquiries may be hindered by confusion about the proper roles of the Commission Chair.

The Association acknowledges that the shortcomings it sees in the present structure of the Commission are statutory in nature. In other words, it is what Parliament intended. For the benefit of those who, from time to time, review the currency and appropriateness of existing statutory provisions, I pass on in this report these views of the Association and recommend that they be considered at the appropriate time and place.

31.3. Relations with the Canadian Government

31.3.1. Statutory recognition of police independence

The RCMP should request statutory codification of the nature and extent of police independence from government with respect to:

1. existing common law principles regarding law enforcement; and
2. the provision of and responsibility for delivery of security services at public order events.

31.3.2. RCMP responsibility

Pending statutory clarification, when the RCMP have agreed to police a public order event, there should be a clear understanding, by both sides, of the terms of the agreement regarding the provision of and responsibility for the delivery of security services at public order events. By whatever educational or other communication means available, the RCMP must instil in its officers, particularly those at senior levels who could be in contact in their professional work with senior representatives of the Government of Canada, that they are to brook no intrusion or interference whatever from government officials as they meet the responsibilities of providing the agreed upon security services. While there will be room for a consultative process in such matters, ultimate responsibility must rest exclusively with the RCMP. Officers should know that any actions on their part, beyond participating in a consultative process, that allows for intrusion by government officials into the formulation and execution of decisions relating to the provision of security services, will result in disciplinary action.

31.3.3. Record of meetings

Where in the planning stage of a public order event, meetings or other contact occurs between police and senior federal government officials, examples of which are to be found in this report, where practicable, minutes of those occasions should be recorded and, where that does not occur, the police should, subsequently, record the business transacted in a memorandum to file.

31.4. Relations with Foreign Governments

Similar to relations with the Government of Canada, police officers should brook no intrusion or interference from foreign diplomats or consular officials when meeting their responsibilities of providing security services to the Canadian public, and they should be made aware that any deviation from that position can be expected to result in disciplinary action.

31.5. General

31.5.1. Consistent policies

Detachment policies on specific issues should, as much as possible, be consistent from one detachment to another. That will benefit RCMP members and users of RCMP services alike. To that end there should be coordination of those policies in national headquarters with designated personnel assigned to advise detachments and further, detachment policies should be vetted by legal counsel to ensure compliance with the law and consistency with national policies.

31.5.2. Privacy for personal searches

Detachment facilities should contain a private area for conducting personal searches of prisoners in order to respect the privacy and dignity of those being searched. If the required and agreed upon renovations to the Richmond Detachment's facilities have not been completed at the time of the release of this report, they should be carried out without further delay.

All of which is respectfully submitted this 31st day of July, 2001.

Ted Hughes, Q.C., Commissioner

APPENDIX I

Parts VI and VII of the *RCMP Act*

APPENDIX I

PART VI

ROYAL CANADIAN MOUNTED POLICE PUBLIC COMPLAINTS COMMISSION

Establishment and Organization of Commission

Commission established

45.29 (1) There is hereby established a commission, to be known as the Royal Canadian Mounted Police Public Complaints Commission, consisting of a Chairman, a Vice-Chairman, a member for each contracting province and not more than three other members, to be appointed by order of the Governor in Council.

Consultation

(2) A member of the Commission for a contracting province shall be appointed after consultation with the Minister or other elected representative responsible for police affairs in that province.

Full- or part-time

(3) The Commission Chairman is a full-time member of the Commission and the other members may be appointed as full-time or part-time members of the Commission.

Tenure of office

(4) Each member of the Commission shall be appointed to hold office during good behaviour for a term not exceeding five years but may be removed for cause at any time by order of the Governor in Council.

Re-appointment

(5) A member of the Commission is eligible for re-appointment on the expiration of the member's term of office.

Eligibility

(6) No member of the Force is eligible to be appointed or to continue as a member of the Commission.

Alternate member

(7) The Governor in Council may, by order, appoint a person to be an alternate member for any member of the Commission, other than the Commission Chairman, and the

alternate member so appointed may act as a member of the Commission in the event of the absence, incapacity or ineligibility to conduct a hearing of that member.

Idem

(8) An alternate member shall be appointed as a part-time member of the Commission and subsections (2), (4) to (6) and (10) and (11) apply, with such modifications as the circumstances require, to an alternate member as though the alternate member were a member of the Commission.

Salary of full-time members

(9) Each full-time member of the Commission is entitled to be paid such salary in connection with the work of the Commission as may be approved by order of the Governor in Council.

Fees of part-time members

(10) Each part-time member of the Commission is entitled to be paid such fees in connection with the work of the Commission as may be approved by order of the Governor in Council.

Expenses

(11) Each member of the Commission is entitled to be paid reasonable travel and living expenses incurred by the member while absent from the member's ordinary place of residence in connection with the work of the Commission.

Benefits of full-time members

(12) The full-time members of the Commission are deemed to be employed in the Public Service for the purposes of the Public Service Superannuation Act and to be employed in the public service of Canada for the purposes of the Government Employees Compensation Act and any regulations made under section 9 of the Aeronautics Act.

Definition of "contracting province"

(13) In this section, "contracting province" means a province the government of which has entered into an arrangement with the Minister pursuant to section 20.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Commission Chairman

45.3 (1) The Commission Chairman is the chief executive officer of the Commission and has supervision over and direction of the work and staff of the Commission.

Absence or incapacity

(2) In the event of the absence or incapacity of the Commission Chairman or if the office of Commission Chairman is vacant, the Minister may authorize the Vice-Chairman to exercise the powers and perform the duties and functions of the Commission Chairman.

Delegation

(3) The Commission Chairman may delegate to the Vice-Chairman any of the Commission Chairman's powers, duties or functions under this Act, except the power to delegate under this subsection and the duty under section 45.34.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Head Office

45.31 (1) The head office of the Commission shall be at such place in Canada as the Governor in Council may, by order, designate.

Staff

(2) Such officers and employees as are necessary for the proper conduct of the work of the Commission shall be appointed in accordance with the Public Service Employment Act.

Idem

(3) The Commission may, with the approval of the Treasury Board,

(a) engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commission to advise and assist the Commission in the exercise or performance of its powers, duties and functions under this Act; and

(b) fix and pay the remuneration and expenses of persons engaged pursuant to paragraph (a).

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Duties

Duties of Commission

45.32 (1) The Commission shall carry out such functions and duties as are assigned to it by this Act.

Duties of Commission Chairman

(2) The Commission Chairman shall carry out such functions and duties as are assigned to the Commission Chairman by this Act.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Rules

Rules

45.33 Subject to this Act, the Commission may make rules respecting

(a) the sittings of the Commission;

(b) the manner of dealing with matters and business before the Commission generally, including the practice and procedure before the Commission;

(c) the apportionment of the work of the Commission among its members and the assignment of members to review complaints referred to the Commission; and

(d) the performance of the duties and functions of the Commission under this Act generally.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Annual Report

Annual report

45.34 The Commission Chairman shall, within three months after the end of each fiscal year, submit to the Minister a report of the activities of the Commission during that year and its recommendations, if any, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives it. R.S., 1985, c. 8 (2nd Supp.), s. 16.

PART VII

PUBLIC COMPLAINTS

Receipt and Investigation of Complaints

Complaints by public

45.35 (1) Any member of the public having a complaint concerning the conduct, in the performance of any duty or function under this Act or the Witness Protection Program Act, of any member or other person appointed or employed under the authority of this Act may, whether or not that member of the public is affected by the subject-matter of the complaint, make a complaint to

(a) the Commission;

(b) any member or other person appointed or employed under the authority of this Act; or

(c) the provincial authority in the province in which the subject-matter of the complaint arose that is responsible for the receipt and investigation of complaints by the public against police.

Acknowledgment of complaint

(2) Every complaint under subsection (1) shall be acknowledged in writing, if the complaint is in writing or if the complainant requests that the complaint be so acknowledged.

Notification of Commissioner

(3) The Commissioner shall be notified of every complaint under subsection (1).

Notification of member

(4) Forthwith after being notified of a complaint under subsection (3), the Commissioner shall notify in writing the member or other person whose conduct is the subject-matter of the complaint of the substance of the complaint unless, in the Commissioner's opinion, to do so might adversely affect or hinder any investigation that is being or may be carried out in respect of the complaint.

R.S., 1985, c. 8 (2nd Supp.), s. 16; 1996, c. 15, s. 22.

Informal disposition

45.36 (1) The Commissioner shall consider whether a complaint under subsection 45.35(1) can be disposed of informally and, with the consent of the complainant and the member or other person whose conduct is the subject-matter of the complaint, may attempt to so dispose of the complaint.

Statements not admissible

(2) No answer or statement made, in the course of attempting to dispose of a complaint informally, by the complainant or the member or other person whose conduct is the subject-matter of the complaint shall be used or receivable in any criminal, civil or administrative proceedings other than, where the answer or statement was made by a member, a hearing under section 45.1 into an allegation that with intent to mislead the member gave the answer or statement knowing it to be false.

Record of informal disposition

(3) Where a complaint is disposed of informally, a record shall be made of the manner in which the complaint was disposed of, the complainant's agreement to the disposition shall be signified in writing by the complainant and the member or other person whose conduct is the subject-matter of the complaint shall be informed of the disposition.

Investigation

(4) Where a complaint is not disposed of informally, the complaint shall be investigated by the Force in accordance with rules made pursuant to section 45.38.

Right to refuse or terminate investigation

(5) Notwithstanding any other provision of this Part, the Commissioner may direct that no investigation of a complaint under subsection 45.35(1) be commenced or that an investigation of such a complaint be terminated if, in the Commissioner's opinion,

(a) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided under any other Act of Parliament;

(b) the complaint is trivial, frivolous, vexatious or made in bad faith; or

(c) having regard to all the circumstances, investigation or further investigation is not necessary or reasonably practicable.

Notification of complainant and member

(6) Where the Commissioner makes a direction in respect of a complaint pursuant to subsection (5), the Commissioner shall give notice in writing to the complainant and, if the member or other person whose conduct is the subject-matter of the complaint has been notified under subsection 45.35(4), to that member or other person, of the direction and the reasons therefor and the right of the complainant to refer the complaint to the Commission for review if the complainant is not satisfied with the direction.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Complaints initiated by Commission Chairman

45.37 (1) Where the Commission Chairman is satisfied that there are reasonable grounds to investigate the conduct, in the performance of any duty or function under this Act, of any member or other person appointed or employed under the authority of this Act, the Commission Chairman may initiate a complaint in relation thereto and where the Commission Chairman does so, unless the context otherwise requires, a reference hereafter in this Part to a complainant includes a reference to the Commission Chairman.

Notification of Commissioner and Minister

(2) The Commission Chairman shall notify the Minister and the Commissioner of any complaint initiated under subsection (1).

Notification of member

(3) Forthwith after being notified of a complaint under subsection (2), the Commissioner shall notify in writing the member or other person whose conduct is the subject-matter of the complaint of the substance of the complaint unless, in the Commissioner's opinion, to do so might adversely affect or hinder any investigation that is being or may be carried out in respect of the complaint.

Investigation

(4) A complaint under subsection (1) shall be investigated by the Force in accordance with rules made pursuant to section 45.38.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Rules

45.38 The Commissioner may make rules governing the procedures to be followed by the Force in notifying persons under this Part and in investigating, disposing of or otherwise dealing with complaints under this Part. R.S., 1985, c. 8 (2nd Supp.), s. 16.

Interim reports

45.39 The Commissioner shall notify in writing the complainant and the member or other person whose conduct is the subject-matter of the complaint of the status of the investigation of the complaint to date not later than forty-five days after being notified of the complaint and monthly thereafter during the course of the investigation unless, in the Commissioner's opinion, to do so might adversely affect or hinder any investigation that is being or may be carried out in respect of the complaint. R.S., 1985, c. 8 (2nd Supp.), s. 16.

Final report

45.4 On completion of the investigation of a complaint, the Commissioner shall send to the complainant and the member or other person whose conduct is the subject-matter of the complaint a report setting out

(a) a summary of the complaint;

(b) the results of the investigation;

(c) a summary of any action that has been or will be taken with respect to resolution of the complaint; and

(d) in the case of a complaint under subsection 45.35(1), the right of the complainant to refer the complaint to the Commission for review if the complainant is not satisfied with the disposition of the complaint by the Force.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Reference to Commission

Reference to Commission

45.41 (1) A complainant under subsection 45.35(1) who is not satisfied with the disposition of the complaint by the Force or with a direction under subsection 45.36(5) in respect of the complaint may refer the complaint in writing to the Commission for review.

Material to be furnished

(2) Where a complainant refers a complaint to the Commission pursuant to subsection (1),

(a) the Commission Chairman shall furnish the Commissioner with a copy of the complaint; and

(b) the Commissioner shall furnish the Commission Chairman with the notice under subsection 45.36(6) or the report under section 45.4 in respect of the complaint, as the case may be, and such other materials under the control of the Force as are relevant to the complaint.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Review by Commission Chairman

45.42 (1) The Commission Chairman shall review every complaint referred to the Commission pursuant to subsection 45.41(1) or initiated under subsection 45.37(1) unless the Commission Chairman has previously investigated, or instituted a hearing to inquire into, the complaint under section 45.43.

Action by Commission Chairman

(2) Where, after reviewing a complaint, the Commission Chairman is satisfied with the disposition of the complaint by the Force, the Commission Chairman shall prepare and send a report in writing to that effect to the Minister, the Commissioner, the member or other person whose conduct is the subject-matter of the complaint and, in the case of a complaint under subsection 45.35(1), the complainant.

Idem

(3) Where, after reviewing a complaint, the Commission Chairman is not satisfied with the disposition of the complaint by the Force or considers that further inquiry is warranted, the Commission Chairman may

(a) prepare and send to the Minister and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit;

(b) request the Commissioner to conduct a further investigation into the complaint; or

(c) investigate the complaint further or institute a hearing to inquire into the complaint.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Institution of hearing without Force report

45.43 (1) Where the Commission Chairman considers it advisable in the public interest, the Commission Chairman may investigate, or institute a hearing to inquire into, a complaint concerning the conduct, in the performance of any duty or function under this Act, of any member or other person appointed or employed under the authority of this Act, whether or not the complaint has been investigated, reported on or otherwise dealt with by the Force under this Part.

Force not required to act before report

(2) Notwithstanding any other provision of this Part, where the Commission Chairman investigates, or institutes a hearing to inquire into, a complaint pursuant to subsection (1), the Force is not required to investigate, report on or otherwise deal with the complaint before the report under subsection (3) or the interim report under subsection 45.45(14) with respect to the complaint has been received by the Commissioner.

Report on investigation

(3) On completion of an investigation under paragraph 45.42(3)(c) or subsection (1), the Commission Chairman shall prepare and send to the Minister and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit unless the Commission Chairman has instituted, or intends to institute, a hearing to inquire into the complaint under that paragraph or subsection.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Hearing

45.44 (1) Where the Commission Chairman decides to institute a hearing to inquire into a complaint pursuant to subsection 45.42(3) or 45.43(1), the Commission Chairman shall assign the member or members of the Commission to conduct the hearing and send a notice in writing of the decision to the Minister, the Commissioner, the member or other person whose conduct is the subject-matter of the complaint and, in the case of a complaint under subsection 45.35(1), the complainant.

Provincial representation

(2) Where a complaint that is to be the subject of a hearing concerns conduct occurring in the course of providing services pursuant to an arrangement entered into under section 20, the member of the Commission appointed for the province in which the conduct occurred shall be assigned, either alone or with other members of the Commission, to conduct the hearing.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Commission

45.45 (1) For the purposes of this section, the member or members conducting a hearing to inquire into a complaint are deemed to be the Commission.

Notice

(2) The Commission shall serve a notice in writing of the time and place appointed for a hearing on the parties.

Sittings of Commission

(3) Where a party wishes to appear before the Commission, the Commission shall sit at such place in Canada and at such time as may be fixed by the Commission, having regard to the convenience of the parties.

Powers of Commission

(4) The Commission has, in relation to the complaint before it, the powers conferred on a board of inquiry, in relation to the matter before it, by paragraphs 24.1(3)(a), (b) and (c).

Rights of persons interested

(5) The parties and any other person who satisfies the Commission that the person has a substantial and direct interest in a complaint before the Commission shall be afforded a full and ample opportunity, in person or by counsel, to present evidence, to cross-examine witnesses and to make representations at the hearing.

Representation of witnesses

(6) The Commission shall permit any person who gives evidence at a hearing to be represented by counsel.

Appropriate officer

(7) In addition to the rights conferred by subsections (5) and (6), the appropriate officer may be represented or assisted at a hearing by any other member.

Restriction

(8) Notwithstanding subsection (4), the Commission may not receive or accept

(a) subject to subsection (9), any evidence or other information that would be inadmissible in a court of law by reason of any privilege under the law of evidence;

(b) any answer or statement made in response to a question described in subsection 24.1(7), 35(8), 40(2), 45.1(11) or 45.22(8);

(c) any answer or statement made in response to a question described in subsection (9) in any hearing under this section into any other complaint; or

(d) any answer or statement made in the course of attempting to dispose of a complaint under section 45.36.

Witness not excused from testifying

(9) In a hearing, no witness shall be excused from answering any question relating to the complaint before the Commission when required to do so by the Commission on the ground that the answer to the question may tend to criminate the witness or subject the witness to any proceeding or penalty.

Answer not receivable

(10) Where the witness is a member, no answer or statement made in response to a question described in subsection (9) shall be used or receivable against the witness in any hearing under section 45.1 into an allegation of contravention of the Code of Conduct by the witness, other than a hearing into an allegation that with intent to mislead the witness gave the answer or statement knowing it to be false.

Hearing in public

(11) A hearing to inquire into a complaint shall be held in public, except that the Commission may order the hearing or any part of the hearing to be held in private if it is of the opinion that during the course of the hearing any of the following information will likely be disclosed, namely,

(a) information the disclosure of which could reasonably be expected to be injurious to the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities;

(b) information the disclosure of which could reasonably be expected to be injurious to law enforcement; and

(c) information respecting a person's financial or personal affairs where that person's interest or security outweighs the public's interest in the information.

Return of documents, etc.

(12) Any document or thing produced pursuant to this section to the Commission shall, on the request of the person producing the document or thing, be released to that person within a reasonable time after completion of the final report under subsection 45.46(3).

Expenses

(13) Where the Commission sits at a place in Canada that is not the ordinary place of residence of the member or other person whose conduct is the subject-matter of the complaint, of the complainant or of the counsel of that member or other person or that complainant, that member or other person, complainant or counsel is entitled, in the discretion of the Commission, to receive such travel and living expenses incurred by the member or other person, complainant or counsel in appearing before the Commission as may be fixed by the Treasury Board.

Interim report

(14) On completion of a hearing, the Commission shall prepare and send to the Minister and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as the Commission sees fit.

Definition of "parties"

(15) In this section and section 45.46, "parties" means the appropriate officer, the member or other person whose conduct is the subject-matter of a complaint and, in the case of a complaint under subsection 45.35(1), the complainant.

R.S., 1985, c. 8 (2nd Supp.), s. 16; 1996, c. 15, s. 23.

Review of complaint

45.46 (1) On receipt of a report under subsection 45.42(3), 45.43(3) or 45.45(14), the Commissioner shall review the complaint in light of the findings and recommendations set out in the report.

Decision of Commissioner

(2) After reviewing a complaint in accordance with subsection (1), the Commissioner shall notify the Minister and the Commission Chairman in writing of any further action that has been or will be taken with respect to the complaint, and where the Commissioner decides not to act on any findings or recommendations set out in the report, the Commissioner shall include in the notice the reasons for not so acting.

Final report

(3) After considering a notice under subsection (2), the Commission Chairman shall prepare and send to the Minister, the Commissioner and the parties a final report in writing setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

Record

45.47 The Commissioner shall

(a) establish and maintain a record of all complaints received by the Force under this Part; and

(b) on request, make available to the Commission any information contained in the record.

R.S., 1985, c. 8 (2nd Supp.), s. 16.

APPENDIX II

Witness Appearance List

APPENDIX II

RCMP Public Complaints Commission
APEC Hearing -1999-2000

WITNESS APPEARANCE LIST

DATE	WITNESS NAME	WITNESS #
Nov. 15/99	Adriaanse, Cst. Michelle	61
Nov. 22/99	Anderson, Sgt. Richard J.	67
Nov. 23/99	Anderson, Sgt. Richard J. – Continued	
Nov. 22/99	Ard, Insp. William C.	66
Mar. 16/00	Ashton, Sgt. Douglas E. (expert)	140
June 22/99	Bailey, Rex	35
Aug. 27/99	Bain, Michael	51
Sept. 7/99	Bain, Michael – Continued	
Jan. 14/00	Bambury, Cst. Waldon P.	91
Feb. 02/00	Bamford, Sat. Richard J.	109
Sept. 15/99	Bartleman, Jim	53
June 18/99	Bhandar, Brenna	29
Jan. 17/00	Bieg, Ronald G. VPD	92
March 23/99	Bindon, Sgt. Don	1
Mar. 01/00	Bindon, Sgt. Don – Continued	
March 24/99	Bindon, Sgt. Don – Continued	
March 25/99	Bindon, Sgt. Don – Continued	
March 26/99	Bindon, Sgt. Don – Continued	
June 25/99	Bonfonti, Sabrina	38
Nov. 18/99	Boutilier, Cpl. Keith D.	65
Nov. 19/99	Boutilier, Cpl. Keith D. – Continued	
Dec. 10/99	Boyle, Cst. Joanne Elizabeth	75
Aug. 5/99	Bracewell, Cst.	46
Aug. 16/99	Bracewell, Cst. – Continued	
Feb. 10/00	Bravener, S/Sat. Andrew V.	118
Dec. 9/99	Breakey, Cst. Charles A.	74
June 21/99	Brooks, Mark	32

DATE	WITNESS NAME	WITNESS #
July 29/99	Brown, Chris	42
July 30/99	Brown, Chris – Continued	
Feb. 02/00	Buis, Sgt. John A.	107
Apr. 13/00	Cable, Eric (Cameraman)	153
Mar. 20/00	Caldwell, Chief Insp. Michael C. (expert)	142
Mar. 21/00	Caldwell, Chief Insp. Michael C. (expert) - Cont'd.	
Aug. 23/99	Carle, Jean	48
Aug. 24/99	Carle, Jean – Continued	
Feb. 01/00	Carr, Cpl. Dale L.	104
Dec. 13/99	Casey, Supt. Vincent M.	76
Dec. 14/99	Casey, Supt. Vincent M. – continued	
Jan. 11/00	Catchpole, Cst. Todd VPD	84
Dec. 17/99	Chaulk, Cst. Richard	79
Noy. 16/99	Chrustie, Sgt. Calvin W.	63
Noy. 17/99	Chrustie, Sgt. Calvin W. – Continued	
Mar. 02/00	Clark, Insp. R. Keith	136
Jan. 18/00	Couillard, Cst. Dominique	95
July 28/99	Courtney, Eilis	41
July 29/99	Courtney, Eilis – Continued	
Jan. 31/00	Cowan, Cst. Susanne	103
April 12/99	Day, Insp. Murray	2
Oct. 4/99	Day, Insp. Murray – Continued	
April 19/99	Day, Insp. Murray – Continued	
Oct. 1/99	Day, Insp. Murray – Continued	
Feb. 07/00	Dickson, Cpl. James P.	112
Sept. 7/99	Dingwall, Insp. Bill	52
Sept. 8/99	Dingwall, Insp. Bill – Continued	
Sept. 9/99	Dingwall, Insp. Bill – Continued	
Sept. 10/99	Dingwall, Insp. Bill - Continued	
Sept. 13/99	Dingwall, Insp. Bill - Continued	
Sept. 14/99	Dingwall, Insp. Bill - Continued	

DATE	WITNESS NAME	WITNESS #
Feb. 23/00	Docherty, Ronald J. (Guard)	127
Jan. 12/00	Doern, Insp. Kenneth D. VPD	86
Aug. 5/99	Donald, Andrew	44
June 4/99	Doucette, Jamie	21
June 14/99	Doucette, Jamie - Continued	
June 14/99	Doucette, Jamie - Continued	
Feb. 03/00	Douglas, Cst. Jennifer D.	110
June 15/99	Douglas, Rob	23
Jan. 21/00	Duffield, Cpl. Tracy D.	99
May 26/99	Dwyer, Kevin	11
Aug. 24/99	Edwards, Len	49
Aug. 25/99	Edwards, Len - Continued	
Aug. 26/99	Edwards, Len - Continued	
Aug. 27/99	Edwards, Len - Continued	
Dec. 8/99	Edwards, Perry L.	73
Dec. 9/99	Edwards, Perry L. - continued	
May 28/99	Emrich, Richard	13
May 5/99	Everton, Bob	7
Jan. 21/00	Ferguson, Sgt. Ian K.	98
Feb. 10/00	Flamank, Cpl. David J.	120
Feb. 11/00	Flamank, Cpl. David J. - Continued	
Mar. 23/00	Forsythe, Insp. Rav	146
Jan. 10/00	Frail, Sgt. Kenneth J. VPD	82
Feb. 23/00	Fraser, Priscilla R. (Guard)	128
Feb. 25/00	Fraser, Priscilla R. (Guard) - Continued	
Mar. 20/00	French, Chief Supt. Stephen G. (expert)	143
Mar. 21/00	French, Chief Supt. Stephen G. (expert) - Cont'd.	
Feb. 03/00	Fulks, Cst. Robert J.	111
June 3/99	Gallagher, Chris	18
Jan. 31/00	Garner, Cst. Gillian J.	102
May 6/99	Goodrich, David	8

DATE	WITNESS NAME	WITNESS #
July 26/99	Goodrich, David – Continued	
May 7/99	Goodrich, David – Continued (also Julv 26)	
Mar. 13/00	Grabb, Insp. Russell G.	138
Nov. 23/99	Green, Supt. Gerald D.	68
Nov. 25/99	Green, Supt. Gerald D. - continued	
June 16/99	Groebner, Johann	25
Feb. 11/00	Gulayets, Cpl. J. W.	122
Sept. 30/99	Hall, Supt. Ric	55
Sept. 30/99	Hall, Supt. Ric – Continued	
Jan. 17/00	Harrison, Cpl. James T.J.	94
Jan. 18/00	Harrison, Cpl. James T.J. - Continued	
Feb. 07/00	Hodder, Cst. Robert	113
Feb. 22/00	Homeniuk, Cst. Allan J.	125
Jan. 14/00	Howell, Cst. Thomas N.	90
June 18/99	Hunter, Megan	30
Mar. 29/00	Johnston, Murray J., Past Asst. Comm. for "E" Division	151
May 26/99	Jones, Craig	12
May 27/99	Jones, Craig – Continued	
May 28/99	Jones, Craig – Continued	
Mar. 28/00	Kendall, Deputy Sheriff John H.	150
Dec. 7/99	Killaly, - Insp. Larry G.	72
Mar. 02/00	Kinsey, Cst. Deri	137
Nov. 25/99	Koleyak, Sgt. Peter S.	70
Mar. 22/00	Kraeling, Sgt. L. George	145
Jan. 13/00	Lee, Cst. Ju-Hwan Peter	88
Feb. 11/00	Lefler, Cpl. R.S.	121
July 26/99	Linder, Mike	39
Feb. 22/00	Liu, Cst. Michel C.	126
Feb. 23/00	Liu, Cst. Michel C. – Continued	
Dec. 15/99	Lockert, Cst. Patrick	78
Jan. 18/00	MacMillan, Sgt. Ian D.	96

DATE	WITNESS NAME	WITNESS #
April 22/99	Malmo-Levine, David	4
April 23/99	Malmo-Levine, David – Continued	
Feb. 02/00	Marsh, Cpl. James	108
Mar. 28/00	Massie, Cst. Normand R.	149
Aug. 5/99	Mauser, Mathieu	45
July 30/99	May, Supt. Wayne	43
Dec. 16/99	May, Supt. Wayne, - Continued	
Aug. 3/99	May, Supt. Wayne, - Continued	
Aug. 4/99	May, Supt. Wayne, - Continued	
Aug. 16/99	May, Supt. Wayne, - Continued	
Aug. 17/99	May, Supt. Wayne, - Continued	
Aug. 18/99	May, Supt. Wayne, - Continued	
Aug. 19/99	May, Supt. Wayne, - Continued	
Aug. 20/99	May, Supt. Wayne, - Continued	
Mar. 24/00	McCarthy, Christina B.	147
Feb. 08/00	McDonald, Cpl. Charles J.	115
Nov. 24/99	McGuinness, Deputy Chief Brian J., VPD	69
Nov. 25/99	McGuinness, Deputy Chief Brian J., VPD – Cont'd.	
Jan. 31/00	McLachlin, Cst Everett J.	101
Feb. 09/00	McLaren, Sgt. Peter	116
Oct. 5/99	McNeil, Mary	56
Oct. 6/99	McNeil, Mary – Continued	
Feb. 09/00	Mercer, Sgt. Gary Russell	117
Nov. 18/99	Merkel, Cst. Donald C.	64
May 4/99	Mewburn, Charity	6
Mar. 21/00	Milton, Chief Supt. Robert G. (expert)	144
Mar. 22/00	Milton, Chief Supt. Robert G. (expert) – Continued	
Feb. 01/00	Moloci, S/Sgt. Jerry G.	105
Dec. 14/99	Montague, Peter	77
Dec. 15/99	Montague, Peter – continued	
Dec. 15/99	Montague, Peter – continued	

DATE	WITNESS NAME	WITNESS #
May 31/99	Morris, Jodi	14
Nov. 15/99	Moulton, Insp. Robert E.	62
Nov. 16/99	Moulton, Insp. Robert E. – Continued	
June 1/99	Mullins, Garth	16
June 2/99	Mullins, Garth – Continued	
June 4/99	Mullins, Garth – Continued	
June 15/99	Muttray, Annette	24
June 16/99	Muttray, Annette – Continued	
June 21/99	Neyedli, Andrea	33
June 22/99	Neyedli, Andrea – Continued	
Jan. 10/00	Offer, Insp. Christopher M.R. VPD (retired)	81
June 23/99	Oppenheim, Jonathan	36
June 24/99	Oppenheim, Jonathan – Continued	
June 24/99	Oppenheim, Jonathan – Continued	
June 25/99	Oppenheim, Jonathan – Continued	
Aug. 6/99	Pavlich, Dannis	47
June 17/99	Pearlston, Karen	26
Aug. 26/99	Pelletier, Jean	50
July 27/99	Piper, Dr. Martha	40
July 28/99	Piper, Dr. Martha – Continued	
Feb. 29/00	Planche, Jeffrey D.	131
Oct. 6/99	Plante, S/Sgt. Lloyd	57
Oct. 7/99	Plante, S/Sgt. Lloyd – Continued	
Oct. 8/99	Plante, S/Sgt. Lloyd -- Continued	
May 3/99	Pond, James	5
May 31/99	Porter, Dennis	15
June 1/99	Porter, Dennis – Continued	
Mar. 01/00	Potvin, Cst. Marie J.M.	135
Feb. 10/00	Powell, Cst. Sean T.	119
Mar. 16/00	Quinlan,Sgt. Jay (expert)	141
Mar. 17/00	Quinlan, Sgt. Jay (expert) – Continued	

DATE	WITNESS NAME	WITNESS #
Jan 11/00	Rainey, Cst. Bert VPD	83
Jan. 13/00	Rasche, Cst Mitchell T.	89
Mar. 31/00	Rice-Wells, Lori (Guard)	152
Feb. 07/00	Rollings, Cst Richard G.	114
Mar. 13/00	Ryan, Sgt. E. Wesley (expert)	139
Mar. 14/00	Ryan, Sgt. E. Wesley (expert) –Continued	
Mar. 15/00	Ryan, Sgt. E. Wesley (expert) –Continued	
May 25/99	Samchok, Deke	10
Mar. 27/00	Semeins, Cst. Mark J.	148
Feb. 21/00	Shedden, S/Sgt. Frank W.	123
Dec. 6/99	Simard, Robin	71
April 13/99	Singh, Jaggi	3
April 14/99	Singh, Jaggi – Continued	
April 15/99	Singh, Jaggi – Continued	
April 16/99	Singh, Jaggi – Continued	
May 3/99	Singh, Jaggi – Continued	
May 4/99	Singh, Jaggi – Continued	
Jan. 12/00	Smith, Cst. Leonard C. VPD	87
Oct. 18/99	Smith, Gary	58
Oct. 19/99	Smith Gary – Continued	
May 7/99	Smith, Michelle	9
Mar. 01/00	Snow, Cst. John S.	134
Feb. 25/00	Speevak, Insp. Allan R.	130
Mar. 27/00	Speevak, Insp. Allan R. - Continued	
Oct. 25/99	Stewart, S/Sgt. Hugh	60
Oct. 28/99	Stewart, S/Sgt. Hugh - Continued	
Nov. 8/99	Stewart, S/Sgt. Hugh - Continued	
Nov. 9/99	Stewart, S/Sgt. Hugh - Continued	
Nov. 10/99	Stewart, S/Sgt. Hugh - Continued	
Nov. 12/99	Stewart, S/Sgt. Hugh - Continued	
Oct. 26/99	Stewart, S/Sgt. Hugh - Continued	

DATE	WITNESS NAME	WITNESS #
Oct. 27/99	Stewart, S/Sgt. Hugh - Continued	
Jan. 21/00	Stuart, Sgt. Gary J.	100
Feb. 29/00	Szelagiewics, Cpl. Stanley H.	132
June 14/99	Tester, Frank	22
Oct. 19/99	Thompsett, Supt. Trevor	59
Oct. 20/99	Thompsett, Supt. Trevor - Continued	
Oct. 21/99	Thompsett, Supt. Trevor - Continued	
Oct. 22/99	Thompsett, Supt. Trevor - Continued	
June 24/99	Thoms, Mike	37
June 2/99	Thorburn, Elise	17
Jan. 18/00	Tuckee, Cst. John S.	97
Sept. 27/99	Vanderloo, Robert	54
Sept. 28/99	Vanderloo, Robert – Continued	
Sept. 29/99	Vanderloo, Robert – Continued	
Sept. 30/99	Vanderloo, Robert – Continued	
June 4/99	Varela, Isabella	20
June 17/99	Walkinshaw, Bruce	28
June 18/99	Walkinshaw, Bruce - Continued	
Feb. 01/00	Walsh, Cpl. Patrick Leonard	106
June 17/99	Worton, Kari	27
Feb. 22/00	Watson, Cst. Karin – Continued	
Feb. 21/00	Watson, Cst. Karina	124
Jan. 17/00	Watts, Jeffrey D. (Paramedic)	93
Feb. 24/00	Wawryk, Asst./Comm. Wayne P.	129
Feb. 29/00	Weiss, Cst. Joachim E.K.	133
June 18/99	West, Rob	31
June 21/99	West, Rob – Continued	
June 3/99	Westergard-Thorpe, Alissa	19
June 4/99	Westergard-Thorpe, Alissa - Continued	
Dec. 17/99	Wilcott, Cst. Claude	80
June 22/99	Wolinetz, David	34

DATE	WITNESS NAME	WITNESS #
July 27/99	Wolinetz, David – Continued	
Jan. 11/00	Wrathall, Cst. Kris T. VPD	85

APPENDIX III

52 Complaints filed with the Commission

PROTECTED

COMPLAINT

File No. 2000-PCC-971018

SUBJECT: Mr. Donald Griffiths

On November 26, 1997, Mr. Griffiths complained to the Commission that:

> On the afternoon of November 25, 1997 on the University of British Columbia Campus, Craig Jones was pushed to the ground, handcufffed and arrested by unidentified Members of the RCMP. According to Mr. Griffiths, Mr. Jones had wheeled two chalk boards onto the grass outside a barricade, one board printed with the word, 'Democracy', the other with the words, 'Freedom of Speech'. Mr. Jones obeyed an order of an unidentified Member to move the signs back but five minutes later an unidentified Member told Mr. Jones the signs had to be removed. Mr. Jones refused to remove the signs. He was then arrrested.
>
> **Mr. Griffiths wishes to lodge a complaint concerning the conduct in the performance of duties against an unidentified Member of the University of B.C. RCMP Detachment for unnecessary arrrest and assault.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971019

SUBJECT: Mr. Steffan Riddell

On November 25, 1997, Mr. Riddell complained to the Commission that:

> At about 1600 hours on November 24, 1997 at a flag-pole above the Rosegarden Parkade on the University of British Columbia Campus, David Malmo-Levine was speaking to a gathering of students. Mr. Riddell says that Staff Sergeant Stuart approached David and said something to him. David said he wasn't leaving. The Staff Sergeant pushed David's head against the flag-pole, grabbed his throat and twisted his arm. David was then pepper sprayed two or three times. While David was on his knees, he was kneed in the head by the Staff Sergeant. Then, without any warning, the Staff Sergeant pepper sprayed the crowd.
>
> When Mr. Riddell asked for the Staff Sergeant's name Mr. Riddell was threatened with arrest. However, the Staff Sergeant eventually gave his name. When asked why David was being arrested the Staff Sergeant replied, "Because he's being foolish."
>
> **Mr. Riddell wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stuart of the University of B.C. RCMP Detachment for unnecessary arrest, assault, unnecessary use of force, excessive use of force, unnecessary use of pepper spray.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

COMPLAINT

File No. 2000-PCC-971021

SUBJECT: Ms. Isabela Romero

On November 26, 1997, Ms. Romero complained to the Commission that:

> At about 1600 hours on November 24, 1997 at a flag-pole above the Rosegarden Parkade on the University of British Columbia campus a man was speaking to a gathering of students. Several RCMP Members went through the gathering toward the speaker and toward a person who was climbing on the flag-pole. The person on the pole was pulled down. The person speaking said to the police that he had a right to speak, it was not a restricted zone until 1800 hours. An unidentified Member of the RCMP twisted the speaker's arm until he screamed with pain, his throat was held and then Staff Sergeant Stuart fired pepper spray into the speaker's face while he was being held. Then the Staff Sergeant sprayed eight to ten other people who were standing at least four feet away, none of whom were obstructing police. No warning of any kind was given.
>
> When someone asked Staff Sergeant Stuart why the speaker was being arrested the answer was, "Because he was being foolish." While the speaker was lying on the pavement he was offering no resistance but his arms were being twisted and he had an officer's foot pressed on his back.
>
> **Ms. Romero wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stuart and other unidentified Members of the University of B.C. RCMP Detachment for unnecessary arrest, assault, unnecessary use of force, excessive use of force, unnecessary use of pepper spray.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

COMPLAINT

File No. 2000-PCC-971029

SUBJECT: Ms. Susan Connor

On November 28, 1997, Ms. Connor complained to the Commission that:

> At about 1530 hours on November 25, 1997 near Gate 6 of the University of British Columbia campus on South West Marine Drive in Vancouver, B.C. a group of about forty students were sitting on the road outside a barricade. Behind the baricade were a number of unidentified RCMP Members. There was no conflict. Then several vehicles arrived with additional RCMP Members. One of the students asked where the group would have to stand to avoid arrest. Ms. Connor says that the only words she heard were when Staff Sergeant Stuart started giving a speech to the effect that they were going to use force. She got up and started to run away. Before the Staff Sergeant had finished talking, he and other unidentified Members pulled out pepper spray and started spraying everyone. Ms. Connor says there was no time to clarify what had been said before they were pepper sprayed.
>
> **Ms. Connor wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stuart of the University of British Columbia, B.C. RCMP Detachment for excessive and unnecessary use of force.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971030

SUBJECT: Ms. Megan Hunter

On November 27, 1997, Ms. Hunter complained to the Commission that:

> At about 1600 hours on November 25, 1997 near gate 6 at the University of British Columbia on South West Marine Drive in Vancouver, B.C. there was a barricade blocking traffic to the Anthropology Museum. She was with a group of students sitting on the road outside the barricade. There were a number of RCMP Members on the other side of the barricade. Then another group of RCMP Members arrived led by Staff Sergeant Stuart. She said that Staff Sergeant Stuart told the students they would have to leave the road and if they didn't he would use whatever force necessary to clear the road. About 25 of the students got up to leave and several remained. Within a few seconds Staff Sergeant Stuart started spraying people who remained on the road and then sprayed people who were leaving. Ms. Hunter says she was leaving and did not receive a direct hit with the spray but her eyes were burning until the next day.
>
> **Ms. Hunter wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stuart of the University of British Columbia, RCMP Detachment for unnecessary and excessive use of force.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Notes on the UBC Protests of Nov. 25 - Megan Hunter

I had been protesting since 7:30 AM, when I had been outside the law school, behind two layers of fencing, with some signs, as the motorcades entered. At this time I did not get the feeling people in the motorcades were able to see our protest, as we were kept about 200m back from the road.

There was a very strong police presence with ~~both~~ officers on both sides of the fence and snipers on top of the chan centre. However, relations with the police were very amicable at that time. We were aware of some tension between police and protestors at Green college, but we were joking with the police on our side. When another large group of protestors arived the police seemed to get more tense, but relations remained amicable.

After ten motorcades had passed and the police informed us that the last of the motorcades were through, we left the law school and went to the rally at the goddess of democracy. Energy was much higher at the rally, but the protest remained peaceful. At one point the principles of peaceful protest were read out and it was asked that anyone who did not agree with these leave.

At the end of the march, as we approached the flagpole, the situation began to feel much more tense. As I had no interest in getting arested, I stayed in the back half of the croud, because of this I was unable to see what took place between the protestors and police at this time. The organizers did seem to lose control of the situation, but worked hard to return to a peaceful protess, by getting protestors to sit down at the back and by arranging peaceful arrests for those who wished to be arrested.

I left the rally at the flagpole early to go back to my residence and get some food. As I was going to my room, I heard the protestors who were heading to SouthWest Marine Drive go by and decided to join them. When I got there, there were two or three lines of police blocking the road. We all sat down on the other side of the barracade, on the road.

We began chanting slogans and singing songs, eventually the megaphone was passed around, so protestors could speak their minds. At no time was any threat of violence made. On the contrary Mark ~~suggested~~ reminded us all that the police were simply there to do their job, so we should not be angry with them.

Throughout this, the police seemed quite tense, but were still joking amongst themselves and, to some extent, with protestors.

After we had been there for ten or fifteen minutes at least two more vans full of RCMP officers arived. These officers looked much more tense and serious than the officers who were manning the barracade. After a short meeting they began to march over to the barracade. The protestor with the megaphone requested that they give us a warning before any action was taken, so that those of us who did not want to risk arrest could clear the road.

The RCMP officer who appeared to be in charge stepped forward and said something to the effect of "I am staff Sargent Stewart, I am asking you to clear this road and I will use any force I feel is neciessary to clear it." This was the one and only warn

At that point about 25 of the 30 or so protestor stood up to leave the road. Withing three or four seconds of stopping talking, Staff Sargent Stewart began spraying anyone still on or near the ground with pepper spray from a fire-extinguisher sized unit. These peope were then dragged off and arrested by police. They were in no way acting violently and were barely given the chance to leave the road, nevermind be arrested peacefully.

Within less than ten seconds of his original warning Staff Sargent Stewart turned his pepper spray on those who were attempting to fallow his orders and clear the road.

I had no interest in being arrested, so I had stood up and begun to clear the road as soon as Staff Sargent Stewart began to give his warning. Even though I had been quick to stand up and clear the road protestors who were only a meter away from me were sprayed. I had also been sitting in the middle of the road, so I had a shorter distance to walk than many others.

At that point I, allong with most of the other protestors, pannicked and began running down the side road. After a few steps I looked back and saw that the only TV cameraman who was at the scene, had been sprayed in the eyes with pepperspray. I went back towards the road to help him rince out his eyes. He had gotten a lot of pepper spray in his eyes and was unable to open them.

Although I was not directly sprayed with pepper spray everyone around me was getting sprayed and there was enough pepper spray in the air to make my eyes start to burn. At one point I saw a protestor turn his head and ask why they were spraying us. The RCMP officer just told him to keep moving up the road and sprayed him in the face. By this time there were a number of officers spraying pepper spray at retreating protestors.

Througout this initial police onslaught I did not see a single protestor act in a violent way towards a police officer, nor did I hear any suggest that they would.

After the police had chased us fifteen or twent meters up the road the stopped and reformed thi lines. Many of the protestors who had run screa up the road began to walk slowly back towards police lines, only Mark, the protestor with the megaphone got any closer than ten meters to th police.

Mark began to try to calm the situation down by reminding the police and protestors th we were there for a peaceful protest. He went on to remind everyone that the protestors had in no way provoked this and that pepper spray was no neciessary. For a brief moment tension among the protestors anyways began to relax a bit. However, then staff sargent Stewart came up behind Ma grabbed him around the chest, sprayed him in the face with pepper spray and dragged him behind police lines.

The RCMP then began to advance on protestors again spraying the ones closest to them & with pepper spray. There had been no request made for us to move farther up the road, they just began spraying us.

This seemed to raise pannick among the protestors even higher than before as many once again went screaming up the side road. I also began to run up the road again, but saw a middle-aged man pick up a handful of mud and throw it in the direction of the police. Myself and another protestor stopped him from throwing another handful of mud, reminding him that we were there for a peaceful protest and that we did not want to give the police an excuse to use any more force than they were already using. To the best of my knowledge the solitary handful of mud was the only act of violence on the part of a protestor in the entire South West Marine blockade.

The police stopped their advance again, about another fifteen meters up the road, beside the entrance to Sherwood Lett. By this point there were many Place Vanier residents, who had come out to see what the screams were about, lining the inside of the Place Vanier fences.

We remained about ten meters from the police facing them, chanting slogans like "we are not the enemy," "shame on the police," and "arrest suharto." After we had stood like that for a minute or two the police took another coupple of steps forward as if to attack again, but did not spray any more pepper spray. This movement from the police sent many pannicked protestors screaming up the street again.

After this things returned to the two sides staring at eachother with about 5-10 m between us. By this time riot police had been called in and had formed yet another line accross the road.

Feelings among the police seemed to be very mixed. Some looked very tense and serious while others were joking and laughing.

This standoff continued until the motorcades had passed at which point the protestors dispursed peacefully with no prompting from the police. My eyes were still burning at that time and continued to feel irritated in to the next morning.

Throughout the day I felt as though the police were making an effort to ensure that our protests were not seen by the visiting world leaders. In the morning, when the motorcades were comming in the fencelines were so far back that there was little chance we were seen. At South West marine drive we were pushed far back the road even though we were protesting peacefully, outside the safe zone, and attempting to follow police instructions.

I also felt that the RCMP used much more force than was necessary at SW Marine. Most of us had no interest in getting arrested and would have complied with police instructions.

November 28, 1997

COMPLAINT

File No. 2000-PCC-971031

SUBJECT: Mr. Rob West

On November 28, 1997, Mr. West, in his attached fax complained to the Commission that:

> On November 25, 1997 at about 1545 hours in the vicinity of Gate 6 of the University of British Columbia on South West Marine Drive, Vancouver, B.C. he was with a group of protesters who were attacked with pepper spray by Staff Sergeant Stuart and unidentified Members of the University Detachment.
>
> **Mr. West wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stuart and unidentified Members of the University of British Columbia RCMP Detachment for assault, improper use of force and oppressive conduct.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

November 27, 1997

RCMP
Public Complaints Commission
670-840 Howe Street
Vancouver, B.C.
Fax 666-7362

Rob West

Attn: Mr. Agg / Investigator

Consider this to be a formal letter of complaint against Staff Sgt. Stuart of the RCMP, for excessive use of force against protesters, in apparent fulfillment of a political agenda designed to silence critics of the Asia Pacific Economic Cooperation.

On November 25, 1997 at approximately 3:15 PM, a group of 30-40 protesters including myself, moved into position to block Marine Drive south of the RCMP demarcated security zone, adjacent to Place Vanier Residence at UBC. Immediately upon arrival outside of the wooden barricades erected by the RCMP, protesters, including myself, took up various standing and sitting positions on Marine Drive. Our intention was to attempt to block the road so that APEC leaders could not leave the UBC campus without recognizing that a significant body of students and concerned citizens outright reject their corporate agenda, and stand in solidarity with those who have been tortured, butchered, and forced to toil in unacceptable conditions at the hands of some APEC member governments.

Our movement onto Marine Drive was in part caused by the RCMP's violation of the agreement under which the Museum of Anthropology was rented by the federal government for the leader's summit. The agreement required that students be visible to APEC motorcades as they arrived on campus. By denying protesters an appropriate on-campus venue from which to voice anti-APEC concerns, the RCMP exposed what appears to be a blatant political agenda designed to silence opposition to APEC. The arrest of UBC student Craig Jones for holding a protest sign outside of Green College, and the requirement that arrested protesters sign away their right to free speech prior to release, are further examples of the RCMP's dangerous transgression into politics. After the RCMP denied us the ability to protest in front of APEC leaders on the UBC campus, we had no choice but to block the roads leading off campus in order to effectively transmit our message.

From approximately 3:15 until 3:45 our group sat and stood on Marine Drive chanting slogans until several buses arrived from the south. Simultaneously a group of RCMP officers moved down Marine Drive from the north to join their colleagues who had formed a line behind the wooden barricades opposite the protesters. At this point Staff Sgt. Stuart appeared with a fire-extinguisher size canister of pepper spray and gave the following speech: "Ladies and gentlemen my name is Staff Sgt. Stuart. I am clearing this roadway, you have one opportunity to move up that road [the gate heading east onto campus] and clear it off or you will be arrested. I am going to use force, whatever force I deem necessary. I do not intend to fool around. I intend to clear this road, I intend to clear it now. Put the dogs on the side, you are going that way!" While Sgt. Stuart was speaking, protesters began to get up and move off the road. After completing his speech, Sgt. Stuart waited exactly one second before unleashing his canister of pepper spray on the protesters, who were clearly outside of the security zone, and already attempting to move off the road. Next Sgt. Stuart and the line of RCMP moved forward while randomly spraying fleeing students. Once we had moved east onto the roadway intersecting Marine Drive, the RCMP continued to shoot pepper spray and advance upon us. At this time several students behind the fence in Place Vanier Residence were also sprayed. The RCMP continued to advance well up the roadway while randomly spraying protesters.

Staff Sgt. Stuart then surged ahead to grab a protester who had a megaphone. Just prior to Sgt. Stuart's speech, this protester had pleaded with the RCMP to give him five seconds to get people off Marine Drive before the police became violent. He was ignored and then ironically became a victim of RCMP violence.

Ultimately, Staff Sgt. Stuart and the RCMP displayed an exceptional capacity to use intimidation and violence against peaceful protesters at the Marine Drive blockade. They also successfully repressed all signs of political protest well before the leaders' motorcades passed the scene. Lest you doubt the accuracy of what I have said, please refer to the CBC video of the incident. I also have a reverse angle photo of protesters attempting to leave Marine Drive as Staff. Sgt. Stuart is indiscriminately hosing us down with pepper spray. In reference to Cpl. John Buis' statements on CBC news (Nov 26), people leaving the road were not inadvertently sprayed, but rather were specifically targeted by Sgt. Stuart.

What happened along Marine Drive on November 25th was the ultimate end-point of a protracted process of RCMP intimidation against those who had the courage to stand up to the repressive policies of some APEC leaders, and the overall corporate agenda of APEC. I can only conclude, based on what I witnesses at UBC and throughout the APEC conference, that the RCMP were fulfilling a calculated policy of political repression in direct violation of the *Charter of Rights and Freedoms*. In addition, the overzealous actions of Staff Sgt. Stuart suggest to me that he must have had his own political axe to grind in the crushing of opposition.

In the end, the RCMP can be proud that they have joined the esteemed ranks of police and paramilitary forces around the world, who dismiss legitimate peaceful protest with the mantra "I'm just doing my job," and a stinging blast of pepper spray. I am ashamed of Staff Sgt. Stuart and the RCMP for so easily wiping their feet on our rights to free association and free speech.

I am thus requesting an immediate investigation of the actions of Staff Sgt. Stuart, and other RCMP who attacked protesters with excessive force outside of the security zone on Marine Drive, in fulfillment of a political agenda designed to repress legitimate protest against APEC.

Sincerely,

Rob West

COMPLAINT

File No. 2000-PCC-971033

SUBJECT: Ms. Sabina Iseli-Otto

On November 27, 1997, Ms. Iseli-Otto complained to the Commission that:

> At about 1600 hours on November 25, 1997 a group of students were sitting on South West Marine Drive near the Gate 6 entry to the University of British Columbia. There was a barricade with a number of RCMP Members on the other side. There was no conflict for a time. Staff Sergeant Stuart arrived on the scene and told the group they must move or whatever means necessary would be taken to move them. Most of the group got up but were given no chance to move before they were pepper sprayed. The first person to be hit by the spray was a person with a video camera. Up to that time there had been no violence and Ms. Iseli-Otto says she was denied the right to make a peaceful protest. She believes the person with the camera was sprayed first so there would be no pictures of subsequent police behaviour.
>
> The group moved up the road into Gate 6 and were followed by a police line. One of the group with a megaphone told the group that even though the police had used violence, to remember that "We are here for peacefull purposes." At that point, Staff Sergeant Stuart grabbed the person with the megaphone from behind and sprayed pepper spray into the person's face.
>
> The group were sprayed several times as they moved along the road into Gate 6 and people on the other side of the fence which surrounded residences were also sprayed, through the fence.

> **Ms. Iseli-Otto wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stuart and against unidentified Members of the University of British Columbia, RCMP Detachment for assault, unjustified use of powers, unjustified use of force and excessive use of force.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Mark = guy w/ microphone

Sabina Iseli-Otto

- 1 handfull of mud thrown

- sitting around singing + chanting, cracking jokes with the police
- trucks pull up, lots more police.
- ~~[illegible]~~ buses want to get in (assume they're full of army personnel): ask us to move.
- Mark tells everyone to think about being arrested: big decision
- short debate on whether or not to leave
  Meg: maybe we should ~~stay there~~ leave and block the road again as soon as buses are through.
- some people want to stay; Mark tells crowd, tells police that not everyone is moving.
→ Staff Sargeant Stewart tells us to leave
- Starts spraying @ people in the front. I had only been up for a matter of seconds.
- ran! people yelling for water → ran into SL and grabbed some water.
- 2nd spraying after Mark was attacked: Stewart grabbed him around the chest, sprayed him in the face with the other (Mark probably ~~saying something~~ reminding everyone that this was a peaceful protest)
  - I ran into SL, girl w/ orange hair went around fence into Vance side, Stewart grabbed her and ~~f~~ pulled her out, then they closed the gate.
- I ran back around outside, there was a

third spraying.
- Chanting
  - Shame on you
  - We United, the people, will never be defeated.
  - lots of "What will you tell your children" .....
  - people who started cussing @ police were immediately calmed down by other protesters.
  - people on their side of the fence brought water.
  - ~~[illegible]~~ - Stewart sharing joke w/ two other cops: laughing; yelled @ by everyone else; stopped laughing and glared ~~at~~ threateningly.
  - lots of people crying.
- quite a few people w/ their own cameras.
  - a couple of individuals w/ video cameras.

- people left peacefully afterward for Art Gallery.

Sabina Iseli-Otto
Jan. 17, 1998

PROTECTED

COMPLAINT

File No. 2000-PCC-971034

SUBJECT: Mr. Michael Bain

On November 27, 1997, Mr. Bain complained, in the attached fax to the Commission, that:

> On November 25, 1997 at the University of British Columbia in Vancouver, B.C. his classmate, Craig Jones was unnecessarily arrested.
>
> Mr. Bain further complains that at about noon on November 25, 1997 at the University of British Columbia, there was excessive and unnecessary use, by unidentified Members of the RCMP, of pepper spray on the crowd in general.
>
> **Mr. Bain wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for unnecessary arrest and excessive use of pepper spray.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

D. Michael Bain

November 26, 1997

BY FAX: 666-7362
COPY TO R.C.M.P. COMPLAINTS COMMISSION

The Right Honorable Prime Minister Jean Chretien
Prime Minister's Office
Ottawa, Ontario

Dear Prime Minister Chretien,

I am writing to express serious concerns over yesterday's handling by the R.C.M.P. of the student protest against APEC at U.B.C. In particular, I am very much concerned about the arrest and detention of a classmate of mine, Craig Jones. As a witness to the incident and as a third year law student I am convinced that Mr. Jones' fundamental freedoms guaranteed under the *Canadian Charter of Rights and Freedoms* were unjustifiably interfered with. As you know, s. 2 of the *Charter* reads as follows:

> s. 2. Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion;
>
> (b) freedom of thought, belief, *opinion and expression*, including freedom of the press and *other media of communication*;
>
> (c) *freedom of peaceful assembly*; and
>
> (d) *freedom of association*. [italics added].

Mr. Jones was outside of the "protected area" of the APEC motor route, behind a fence, holding two signs reading "free speech" and "democracy." An R.C.M.P. officer inside the "protected area" (the other side of the fence) requested that Mr. Jones take his signs away. Mr. Jones refused, citing his *Charter* rights. Upon this refusal three R.C.M.P. officers came through the fence, grabbed and destroyed Mr. Jones' signs, threw him to the ground, handcuffed him and took him away in a police cruiser. I have no doubt whatsoever that Mr. Jones' fundamental freedoms of opinion and expression, freedom of peaceful assembly, and freedom of association were unjustifiably denied him by the R.C.M.P. I also believe that Jones' legal rights outlined in ss. 7, and 9 of the *Charter* were interfered with, namely: the right to life, liberty and security of the person, and the right not to be arbitrarily detained or imprisoned.

I appreciate that *Charter* rights are not absolute and under s. 1 are guaranteed "subject only to such reasonable limits as can be justified in a free and democratic society." A rumour persists amongst the U.B.C. students that your office ordered that signs along the APEC motor route be removed. Could you please confirm or deny whether such an order was made, and if it was, explain how such an order can possibly be justified in a free and democratic society?

A second concern of mine surrounds the policy of the R.C.M.P. in arresting one of the protest organizers the day before the rally took place on the premise that they had a warrant for his arrest from an outstanding charge. The timing of the arrest of Mr. Jaggi suggests that the R.C.M.P. were attempting to silence the movement leader, prohibit him from participating in the event and take the wind out of the protestors' sails. Luckily this questionable tactic largely failed.

I am also upset with the behaviour of the R.C.M.P. at a protest rally staged by over 1,000 students shortly after 12:00 noon yesterday. While I recognize that the R.C.M.P. has a duty to protect the 18 leaders of the APEC countries and should prevent individuals from scaling the fences, as a witness to the incidents I could see no reason for the use of pepper spray on the crowd in general, nor any justification for the various verbal and physical abuses by the police of the many individuals gathered peacefully. Again, I witnessed a number of infringements of rights guaranteed under the *Charter*. At no time did I hear any member of the R.C.M.P. read out sections of the *Riot Act*.

I was at U.B.C. a few years ago when Bill Clinton and Boris Yeltsin held a summit at the Museum of Anthropology on the campus. The amount of security for two of the world's top leaders did not nearly amount to the number or size of the forces present at U.B.C. these past two days. There was then, no apparent need for concrete barricades, fences, snipers and thousands of police officers armed with pepper spray and riot handcuffs. I feel that the excessive presence of security personnel effectively turned U.B.C. into a militarized zone for the duration of the APEC visit. This kind of armed presence of security suggests to the APEC leaders that Canadian citizens are very easily and properly controlled by the use of force.

I am also concerned with your statements made in relation to the student protest and specifically with reference to the use of pepper spray. Your comment about only using pepper on your food, coupled with your dismissiveness of the issue in general, is disrespectful of the citizens of this country who were not only footing the bill for the event, but were exercising their fundamental and legal rights to assemble and protest the event. These rights are supposedly protected by the *Charter*. I appreciate that your view of what APEC means to Canada and the world may be fundamentally different to those views held by many of the students and professors at the rally, however, the behaviour of the police, coupled with the severity of protection afforded the APEC leaders, the apparent policy of the R.C.M.P. to silence anti-APEC voices and your dismissive comments about the whole incident sends a very clear message to Canadians and the world: *The Canadian Charter of Rights and Freedoms* is nothing more than empty rhetoric and these so-called rights will be curtailed at the whim of the government. Moreover, Canada accepts that the use of force is a legitimate means for silencing dissident voices.

Many of the APEC leaders are dictators, and they return to their countries with the understanding that in Canada barricades and fences, excessive police force and the curtailing of fundamental freedoms is an acceptable and effective means of crowd control. This message is, quite simply, disgusting and having seen what I saw yesterday I am ashamed to call myself a Canadian. I don't believe for a minute that this is a message that you, Prime Minister, personally want to send to anyone, let alone the world, but in light of the events of yesterday, it is the sad message that these leaders take home with them.

The problem with having *Charter* rights redressed in the courts is that when it comes to fundamental rights, once they have been infringed the damage is immediate. When freedom is curtailed, and an opponent's legitimate voice is silenced it is no longer a democracy. I have little doubt that Mr. Jones will win should he launch legal action against the R.C.M.P., but the wrong message has already been sent out to the world. The R.C.M.P. and whatever despicible orders they were acting under are to blame for this perverse state of affairs. I can only hope that the R.C.M.P. officer who told me "we're not accountable to anyone" will be proved wrong and that in the future you will be less dissmissive of the views of the people you represent. Even if you disagree with those views.

Yours truly,

D. Michael Bain
Law III, U.B.C.

cc
Hedy Fry M.P., Vancouver Centre
RCMP Public Complaints Commission
Craig Jones, Cecil Green College, U.B.C., Vancouver
The Globe and Mail

PROTECTED

COMPLAINT

File No. 2000-PCC-971036

SUBJECT: Ms. Deke Samchok

On November 28, 1997, Ms. Samchok complained, in the attached fax and in her telephone conversation, to the Commission that:

> Contrary to a prior agreement with a senior Member of the RCMP a Tibetan flag, on the Graduate Student Centre at the University of British Columbia in Vancouver, B.C., was removed on November 25, 1997 by unidentified Members of the RCMP. Ms. Samchok says that subsequent attempts to resolve the issue were obstructed by Staff Sergeant Plante of the University RCMP Detachment.
>
> Ms. Samchok further complains that serious threats have been made to members of the Graduate Student Society but the RCMP have failed to investigate these threats.
>
> **Ms. Samchok wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Plante and unidentified Members of the University of British Columbia RCMP Detachment for unjustified use of powers and failure to investigate threats of violence.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

November 27, 1997

Honourable Andy Scott
Solicitor General of Canada
340 Laurier Ave W.
Ottawa, Ontario
K1A 0P8

Dear Mr. Scott,

I am writing to you on a matter of the greatest importance and urgency. I hope that you are able to satisfactorily resolve the following problem.

On November 21, 1997 the Graduate Student's Society (GSS) of the University of British Columbia (U.B.C.) raised the Tibetan national flag and two anti - A.P.E.C. banners outside their centre. This move was undertaken as a protest against the exclusion of human rights from the A.P.E.C. agenda. The site was also significant as it was within the security exclusion zone at U.B.C. Superintendent Trevor Thomsett agreed with the president of the G.S.S. that the Tibetan flag did not constitute a security threat and could remain flying during the leader's meeting at the nearby Museum of Anthropology.

On the morning of November 24 two R.C.M.P. officers went to the centre and took down the flag without notifying anyone, including Mr. Dwyer. The anti - A.P.E.C. banners were left untouched. Staff Sergeant Lloyd Plante of the U.B.C., R.C.M.P. detachment later claimed that the flag was removed because it constituted a security threat. He claimed that he ordered its removal to stop a violent demonstration by a small group of pro - China demonstrators. If this was the case it will be the first time in the history of this force that it has been intimidated and capitulated to threats of violence. If this reason is to be accepted then it sets a very bad precedent as any group threatening violence can have their way. Non-violent and law abiding groups such as the Canada Tibet Committee are penalized because they tend to cooperate with the police forces and do not resort to violent threats. November 24 was a black day for Canada's civil liberties and an even blacker day for this once proud force. It is ironic that a small group of mostly foreign nationals could receive special treatment at the hands of the R.C.M.P. These protestors should have been treated like all other protestors and told that if they broke any laws or breached the security zone it would result in their immediate arrest.

It is my belief that the decision to remove the flag came directly from the P.M.O. contrary to Staff Sergeant Plante's assertions and claim that he and he alone was behind the decision. Another RCMP officer had admitted as much to Kevin Dwyer by stating that they had received calls from persons in Ottawa who they declined to name. This is a contradiction of Staff Sergeant Plante's statement. Staff Sergeant Plante is to be commended for his loyalty and protection of his political superiors. I hope that you can investigate this matter completely and are able to satisfactorily resolve this matter at your earliest convenience.

Sincerely,

Deke Samchok

Deke Samchok

cc: Dr. Hedy Fry, M.P.
Svend Robinson, M.P.
Staff Sergeant Lloyd Plante, R.C.M.P

PROTECTED

COMPLAINT

File No. 2000-PCC-971039

SUBJECT: Mr. Glenn Barr

On November 28, 1997, Mr. Barr complained to the Commission that:

> There was excessive use of force when unidentified Members of the University of British Columbia RCMP Detachment pepper sprayed students without giving the students an opportunity to understand the directions given to them. This happened near the Gate 6 entrance to the University of British Columbia on South West Marine Drive in Vancouver on November 25, 1997.
>
> **Mr. Barr wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for use of excessive force.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971082

SUBJECT: Mr. Glenn Barr

On December 9, 1997, Mr. Barr, in his attached fax, complained to the Commission that:

> At the University of British Columbia during the APEC conference in November, 1997, Superintendent May and Staff Sergeant Stewert aggressively prevented Canadian citizens from protesting in a democratic civil manner.
>
> **Mr. Barr wishes to lodge a complaint concerning the conduct in the performance of duties against Superintendent May and Staff Sergeant Stewert of the University of British Columbia RCMP Detachment for oppresive conduct.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

M. GLENN BARR, CA

1/15

FACSIMILE COVER SHEET

VIA Fax Number: 604 - 666 - 7362	**Please Deliver To:** B W AGG. INVESTIGATOR
Location: RCMP PUBLIC COMPLAINTS	**Sender:** GLENN BARR
Date: 8/12/97 7^{30} .m.	**Number of Pages, Including Cover Sheet:** ~~6~~ 1

COMMENTS: DEAR SIR

I ACKNOWLEDGE YOUR PROMPT LETTER OF DEC 4/97 AND WISH TO ~~[illegible]~~ LODGE MY ~~[illegible]~~ SECOND COMPLAINT THAT NOT ONLY WAS EXCESSIVE FORCE USED, BY THE RCMP, BUT THEY AGGRESSIVELY PREVENTED CANADIAN CITIZENS FROM PROTESTING IN A DEMOCRATIC CIVIL MANNER.

I LODGE MY COMPLAINT AGAINST

STAFF SARGENT HUGH STEWART

AND HIS SUPERVISOR

SUPERINTENDENT WAYNE MAY

DEC 09 1997

I ENCLOSE PROFESSOR WESLEY PUE'S PROFESSOR OF LAW, UBC INTERNET ARTICLES ON THIS SUBJECT IN SUPPORT OF MY COMPLAINT (14 PAGES)

I REQUEST THE COMMISSIONER OF THE RCMP COMPLAINTS COMMISSION TO EXAM MESSRS STEWART AND MAY UNDER OATH TO ESTABLISH THE FACTS

P.T.O.

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL AS SOON AS POSSIBLE

PROTECTED

COMPLAINT

File No. 2000-PCC-971040

SUBJECT: Ms. Jillian LynnLawson

On November 28, 1997, Ms. LynnLawson complained to the Commission that:

> An unidentified Member of the RCMP with a big canister of pepper spray was seen on the National CBC News, shown at Whitehorse, Yukon at 2100 hours on November 27, 1997. The pepper spray was directed at a CBC cameraman and at students. Ms. LynnLawson believes that police used excessive force in a situation that was not life threatening and their actions were contrary to the Canadian Charter of Rights and Freedoms.
>
> **Ms. LynnLawson wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for excessive force and oppressive conduct.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

COMPLAINT

File No. 2000-PCC-971041

SUBJECT: Mr. Rod Vilene

On November 28, 1997, Mr. Vilene complained to the Commission that:

> When he was watching television news of the events at the University of British Columbia during the APEC Conference he noticed that the first people to be pepper sprayed were photographers. He believes that unidentified Members of the RCMP were deliberately trying to cover up evidence of their behaviour.
>
> **Mr. Vilene wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for oppressive conduct.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

COMPLAINT

File No. 2000-PCC-971042

SUBJECT: Mr. Andrew Piontkovsky

On December 1, 1997, Mr. Piontkovsky complained to the Commission that:

> Based on what he saw as television news coverage of events at the University of British Columbia during the APEC Conference he believes that unidentified Members of the RCMP used excessive force when they pepper sprayed people who were trying to run away.
>
> He also believes that the removal of signs saying, 'Democracy' and 'Free Speech' by unidentified Members of the RCMP was oppressive and unnecessary.
>
> Mr. Piontkovsky also complained that when the RCMP asked citizens to sign a waiver giving up their right to protest they were asking citizens to sign away their rights and was oppressive behaviour.
>
> He also complains about excessive force used by individual unidentified Members of the RCMP and expects that their individual actions will be investigated.
>
> **Mr. Piontkovsky wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for excessive force and oppresive behaviour.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971045

SUBJECT: Mr. David Breen

On December 2, 1997, Mr. Breen complained to the Commission that:

> The RCMP improperly denied APEC demonstrators their constitutional right to free speech and association.
>
> For example, the arrest and detention of Craig Jones on November 24, 1997; the restriction of student residents of Green College when they were denied the freedom to put up signs on November 24 and 25, 1997; the intimidating security measures and presence of numbers of RCMP Members on the University campus on November 24 and 25, 1997 which created a hostile and tense environment and therefore contributed to the intensity of the protests; the use of excessive force at the site of the breech of the fence and the excessive force used to move protesters from the motorcade exit route on South West Marine Drive near Gate 6; lack of professional restraint on the part of RCMP Members; their indiscriminate use of pepper spray; their too quick use of their arsenal of pepper spray; the assault of students who were actually trying to leave the areas of confrontation and the assault of bystanders; the aggresively offensive rather than defensive behaviour of some Members of the RCMP, thereby escalating violence.
>
> The inappropriate display of force and the excessive response of the RCMP conveyed an image of unbridled and undisciplined police power that undermines and does damage to the public trust upon which the police system in democratic countries must rest.

> **Mr. Breen wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for improper use of force and oppressive conduct.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

COMPLAINT

File No. 2000-PCC-971047
(Amended as of December 12, 1997)

SUBJECT: Mr. Jamie Doucette

On December 2, 1997, Mr. Doucette complained to the Commission that:

> On November 25, 1997, at about 1730 hours he was a bystander near the flagpole above the Rosegarden Parkade, at the University of British Columbia, where a group of people were holding a public forum. One speaker was at the flagpole and there was another person climbing on the pole. Members of the RCMP who were at the scene went throught the crowd toward the flagpole. Staff Sergeant Stuart and an unidentified Member approached the speaker at the flagpole. Staff Sergeant Stuart grabbed the speaker by the arm, pushed him into the flagpole and pepper sprayed the speaker in the face. The speaker was pushed forcefully to the ground. He had not been violent and the crowd was peaceful.
>
> Mr. Doucette was again a bystander when he saw the second arrest of Mr. Jaggi Singh. While he was sitting, watching events he was approached by an unidentified RCMP Member with a dog. Before Mr. Doucette could move, he was bitten by the dog, receiving an injury to his right arm which required hospital treatment. Mr. Doucette said he was rescued from the dog by another student and has the names of witnesses.
>
> On November 26, 1997 he was an observer at a protest by members of the East Timor Alert Network at the University of British Columbia. He was in the vicinity of Chancellor Boulevard and Newton Crescent, with his bicycle, reporting via a walkie talkie to people at the Student Union Building. He was behind the crowd, away from the police lines. As he was talking into his radio he was grabbed by two unidentified RCMP Members who said, "Arrest." He was handcuffed and was sat on the ground for about 45 minutes, then was taken

the University Detachment. He has never recovered his bicycle. He was then taken to the Richmond, B.C. RCMP Detachment along with about fifteen other people who had been arrested. Mr.Doucette says that the driver of the vehicle took about one and a half hours and seemed to drive around needlessly, going over speed bumps in a parking lot.

Mr. Doucette says that they were put into the drunk tank and were not allowed to use a washroom. It was two hours before they were booked in. He was released with no charges being laid against him.

Mr. Doucette says that the walkie talkie was taken from him when he was arrested. No receipt was given to him and the walkie talkie was not returned to him when he was released.

Mr. Doucette says that although many RCMP Members identified themselves when he asked them, there were some who refused and two whose identification was obscured.

Mr. Doucette wishes to lodge complaints concerning the conduct in the performance of duties against: Staff Sergeant Stuart for assault; against unidentified Members of the University Detachment for assault by a police dog; unlawful arrest; assault; neglect of duty in failing to properly handle a prisoner; failure to account for and return a bicycle and a walkie talkie; failure to identify themselves.

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971048
(Amended as of December 12, 1997)

SUBJECT: Mr. Michael Sears

On December 2, 1997, Mr. Sears complained to the Commission that:

> At about 1600 hours on November 25, 1997 he was alone, walking with his bicycle toward the Gate 6 entry to the University of British Columbia. He was on a path next to fences between Place Vanier Residence and North West Marine Drive. Suddenly he was approached by an unidentified Member of the RCMP who had a dog on a leash. The Member yelled at Mr. Sears to, "Get out of there." Mr. Sears says that he couldn't go back because the Member with the dog was behind him and he couldn't go forward because there was a line of RCMP Members coming toward him from the vicinity of Gate 6. The Member with the dog told Mr. Sears to get his bike and himself over the fence or the dog would be let loose on him. Mr. Sears says the steel bar fence is at leasf six feet high, however, he managed to throw his bicycle over and climbed over after it.
>
> **Mr. Sears wishes to lodge a complaint concerning the conduct in the performance of duties against an unidentified Member of the University of British Columbia RCMP Detachment for threatening with a dog attack and forcing Mr. Sears to throw his bicycle over a high fence and forcing Mr. sears to climb over a high fence.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971049

SUBJECT: Mr. Don Beggs

On December 4, 1997, in his telephone conversation and in the attached fax of December 3, 1997, Mr. Beggs complained to the Commission that:

> He saw a television news report of an event at the University of British Columbia during the APEC conference where an unidentified Staff Sergeant announced that he was going to use force and then immediately used a huge jug of pepper spray to attack quietly protesting university students. This person continued to spray observers who were behind a permanent fence.
>
> Mr. Beggs says he was disgusted by the manhandling and brutalizing of young people who were hurt by the spray and he believes the young people have a right to make peaceful protests without being subjected to oppressive conduct.
>
> **Mr. Beggs wishes to lodge a complaint concerning the conduct in the performance of duties against an unidentified Staff Sergeant and against unidentified Members of the University of British Columbia RCMP Detachment for unjustified use of force and oppressive conduct.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Facsimilie

Date: November 28th 1997

Location:

Fax Number :

Attention: The RCMP Public Complaints Commission

Photo Copy Fax to: Prime Minister Jean Chretien
RCMP CommisionerPhilip Murray
John Duncan MP Vancouver Island North

From: D Beggs

Subject: Abuse of Power and Breach of Civil Liberty

Background:

Initially I intended to send the accompanying letter to the media. Upon calling your office for a fax number with intent to send a copy to the RCMP Commissioner, I decided that it might be of some utility to address it to your office. In this I am not optimistic. Nonetheless, I am redirecting my original letter to your office as a complaint.

My initial intent being motivated out of patriotism and fundamental admiration for what our national police force has historically stood for, I am more concerned that your political masters address this issue and that our media demand the same.

The gentleman on the phone (1505 hours 97/ 11/ 28) informed me that he was not a policeman, although sounding suspiciously like one. Perhaps in another life? He then advised me that he did not listen to feelings and that, should I have a complaint, to send it in writing. I considered him to at best, very formal, unintentionally rude and sadly, totally lacking in concern for the citizen. Fortunately this attitude was in sharp contrast to many others that kindly and thoughtfully assisted me to send my letter in the midst of a mail strike.

Therefore the original letter is now addressed to The RCMP Complaints Commissioner, with the same photocopies. If you cannot clearly discern my complaint, kindly notify me by fax and I will highlight those portions devoid of feeling and pointing to injustice.

If it requires further bureaucratic form filling, I think not. In that instance I shall thank you for your time and lay my hope in the good conscience of my democratically elected political representatives and my fellow citizen's communications with them.

Number of Pages :

November 26th 1997

RCMP Public Complaints Commission
Vancouver BC

Sir:

Permit me to lodge to comment on the most serious breach of civil liberty and misuse of power that I have ever witnessed in Canada, during my lifetime of half a century. I speak of the scene in Vancouver of a power-swollen ego, embodied in a feeble imitation of a staff sergeant of the RCMP. There he was fiercely announcing that he was about to use force on a group of quietly protesting university students. He then dismayed any decent citizen by immediately spraying his huge jug of pepper spray at citizens' eighteen and nineteen year old. Fortunately some of our media has behaved responsibly in reporting this horrific event.
It was clearly evident that the demonstrating youths in question responded immediately to the boisterous demands of power crazy individual. Not only did he deliver his nasty package with evident glee, he continued to spray youths that had been quietly observing the event from behind permanent fencing. The subsequent manhandling and brutalizing of young people hurt by the spray was as disgusting to observe as the initial dastardly attack.

I have no idea why these young people were protesting. Whether I know, agree or disagree with their cause is irrelevant to this issue. Regardless, I would defend to the death their right to do such. There was absolutely no evidence of violence, threat to others or damage to the public until this egomaniac, and his robotic underlings took it upon themselves to abuse their mandate. I doubt they had any idea of why they were doing this. Perhaps they have completely discarded the excellent motto of what used to be the finest police force in the world. Ironically their actions in this catastrophe were frightening in their similarity to Tinamen Square in Communist China.

We used to be proud of the Force which "Maintain The Right". The men in this incident, diminished the motto, diminished the uniform and diminished the memory of our fathers and grandfathers who gave their lives in defeating the evil European maniac who made this type of trampling of civil liberties commonplace. I do believe I witnessed on another day when comrades of these pepper spray bullies were marching in Remembrance Day parades. Perhaps some of them were there too. What for?

I am not consoled by the pathetic excuses and limp rhetoric of the media *spin-doctor* assigned to damage control. This apologist or *spokes policeman's* feeble attempt to justify this excess with the excuse of being in a hurry is beyond contempt and an apparent blatant lie, as is the fabrication that federal politicians had no role in this affair. The Canadian people deserve an unequivocal apology. Nonetheless, I would not suggest any punitive action for the perpetrators. They already have to live with themselves. They need prayer and forgiveness, as do their leaders. However, it would be judicious if the staff sergeant pretender were made to watch the video tape of his behaviour at least a dozen times.

Sincerely,

D G Beggs
P/c: Prime Minister Jean Chretien
RCMP Commissioner, Phillip Murray
John Duncan, MP

COMPLAINT

File No. 2000-PCC-971050

SUBJECT: Mr. Paul Barclay

On November 28, 1997, Mr. Barclay complained to the Commission that:

> At about 1530 hours on November 25, 1997 he was with a group of about 30 to 40 students sitting on South West Marine Drive in Vancouver, B.C. near the Gate 6 entrance to the University of British Columbia. There was a barricade with about a dozen RCMP Members on the other side. There had been no problem until more RCMP Members arrived when the students were rapidly approached by a person who said, "I'm Staff Sergeant Steward and I'm clearing this road and I'm clearing it now. At that time, Mr. Barclay and several others stood up to walk to the side of the road. He made only four steps and then police started pepper spraying students and holding people down on the pavement. Mr. Barclay said that the attack on the students started within five seconds of the Staff Sergeant speaking. According to Mr. Barclay, unidentified Members of the University RCMP Detachment chased people up the Gate 6 road, spraying as they went. There were also people on the residence side of the fence which bordered the road and they were sprayed as well even though they had not previously been involved. One of the persons sprayed was a TV cameraman.
>
> **Mr. Barclay wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Steward and unidentified Members of the University of British Columbia RCMP Detachment for assault and excessive use of force.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971052

SUBJECT: Mr. Michael Burnham

On December 3, 1997, Mr. Burnham complained to the Commission that:

> At about 1300 hours on November 25, 1997 people at the University of British Columbia saw Mr. Jaggi Singh thrown to the ground, thrown into a vehicle and driven away. There was no identification of the people who did this to Mr. Singh and many witnesses to the event were very upset that such a thing could happen.
>
> When it was later learned that the people who had taken Mr. Singh were RCMP Members it was seen by many that it was an obvious attempt to remove an activist from the APEC scene. The timing and execution of the arrest served only to incite people to protest.
>
> The requirement that Mr. Singh could be released only if he agreed to a condition that he not go to the APEC site to protest is contrary to the Canadian Charter of Rights and Freedoms.
>
> Mr. Burnham says that he was an onlooker at the Main Mall and Crescent Road when the fence came down. He says that the fence appeared to be insecurely fastened and there is some doubt that people holding it actually meant to pull it down. He believes that if the fence had been more secure there would have been no confrontation.
>
> Mr. Burnham says that the presence of what appeared to be 100 police, some with dogs, created an intimidating, oppressive and offensive atmosphere at the University rather than a protective atmosphere.

He complains that there was excessive and indiscriminate use of pepper spray and people who were blinded could not be expected to find their way out of the area and therefore use of pepper spray was an ineffective method of crowd control.

Mr. Burnham also complains that an unidentified Member of the RCMP needlessly pepper sprayed a crowd of students who were gathered near Place Vanier Residence on Marine Drive. The RCMP also arrested a student who was using a megaphone to tell people to back away. This incident was seen by Mr. Burnham as he watched the news on television.

Mr. Burnham also complains that unidentified Members of the RCMP took down a Tibetan flag from the Graduate Student Centre even though there had been agreement with the RCMP that the flag was not a threat to security. The reason the RCMP gave for the removal was that threats of violence had been made by some Chinese students if the flag continued to be flown. Mr. Burnham finds it contradictory that the RCMP would remove a peaceful symbol rather than prosecute the people who made threats of violence.

Mr. Burnham complains that the RCMP threw to the ground and arrested Craig Jones, who was outside of a security zone, because he refused to give up a harmless sign he was showing.

Mr. Burnham further complains that Mike Thomas, who was confined within a caged area around his residence, Green College, because he would not sign a waiver, had his sign forcibly removed by three unidentified Members of the RCMP. Mr. Burnham believes that the requirement that Mike Thomas sign a waiver to give up his rights, and the removal of the sign, was contrary to the Canadian Charter of Rights and Freedoms.

Mr. Burnham wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for : improper arrest of Mr. Singh; oppressive conduct in the arrest of Mr. Singh; neglect of duty in errecting a flimsy fence; conduct and numbers intended to intimidate, oppress, and be offensive rather than protective; excessive and indiscriminate use of pepper spray; pepper spray of people who were no threat to security; removing a symbol rather than prosecuting those who threatened violence; arrest and oppression of people who were excercising their rights by displaying signs.

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971068

SUBJECT: Mr. Andreas Siebert

On December 8, 1997, in his attached letter, Mr. Siebert complained to the Commission that:

> On Tuesday, November 25, 1997 unidentified Members of the RCMP removed a Tibetan flag from the Graduate Student Society at the University of British Columbia. He objects to the removal of the flag and to the response by Staff Sergenat Plante that it was because there were threats of violence by a group of Chinese students.
>
> **Mr. Siebert wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Plante and unidentified Members of the University of British Columbia RCMP Detachment for unnecessary use of powers and failing to protect freedom to peaceful protest from threats of violence.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

December 2, 1997

Andreas Siebert

RCMP Public Complaints Commission
BC Regional Office
670-840 Howe St.
Vancouver, B.C., V6Z 2L2

Dear Sirs,

I would like to complain about the behavior of the RCMP with respect to the removal of the Tibetan Flag from the building of the Graduate Student Society at the University of British Columbia on Tuesday, 25 November 97, during the APEC conference.

The GSS, of course, was perfectly entitled to flying the Tibetan flag, there was nothing illegal about it. The RCMP even had agreed beforehand that this wouldn't be a problem.

At the time, RCMP Staff Sgt Plante suddenly and surprisingly argued that there was a security issue here, claiming that a group of Chinese students was threatening a violent protest.

Now here is my biggest problem: According to my personal value system, the police should protect the citizens from everyone who threatens his fellow beings. Instead, unbelievably, the RCMP sided with the bully, quick to act according to the wishes of some boors.

I can only hope that in the future the RCMP will defend the freedom of expression more vigorously in this country.

Sincerely

12/11
DEC 08 1997

COMPLAINT

File No. 2000-PCC-971073

SUBJECT: Mr. Malmo-Levine

On December 4, 1997, Mr. Malmo-Levine complained to the Commission that:

> At the University of British Columbia on November 24, 1997 at about 1620 hours he was near a flagpole located in the vicinity of a building with round walls where there was a view of the water and mountains. A protester was climbing the flagpole and was at about head hight when unidentified Members of the RCMP moved in. Mr. Malmo-Levine says he stood between the person on the pole and two police officers. An unidentified RCMP Member and another Member named Stuart grabbed Mr. Malmo-Levine by the wrists and twisted them. Mr. Malmo-Levine then encouraged other people to move in and resist. The RCMP Member named Stuart then pepper sprayed Mr. Malmo-Levine in the eyes from a few inches away. Other people were sprayed as well and Stuart kicked one of the young people. Mr. Malmo-Levine says that he was dragged away, cuffed and placed in leg restraints. Someone grabbed him by the testicles but didn't squeeze for which he thanked the person.
>
> Mr. Malmo-Levine was held in custody overnight at the University RCMP Detachment and then taken to the Richmond RCMP Detachment where he was later released after signing a statement that he would not protest at the University of British Columbia.
>
> Mr. Malmo-Levine says that if the police had any objections to what was going on at the flagpole they made no attempt to resolve the issue in any other way except by violence. He says that he had not been attacking anyone and had not been violent in any way. He referred to an article in the October 3, 1991 issue of the Edmonton Journal in which police had set rules for the use of pepper spray only on violent people.

> **Mr. Malmo-Levine wishes to lodge a complaint concerning the conduct in the performance of duties against Officer Stuart and unidentified Members of the University of British Columbia RCMP Detachment for unjustified use of force, excessive use of force, oppressive conduct in denying him his right to protest.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

COMPLAINT

File No. 2000-PCC-971074

SUBJECT: Mr. Johann Groebner

On December 5, 1997, Mr. Groebner complained to the Commission that:

> At about 1500 hours on November 24, 1997 he was on Chancellor Boulevard near the theology buildings at the University of British Columbia where a number of protesters were sitting on the street. He says that as he was walking he was being followed by a man with a video camera who Mr. Groebner later learned was from the press in New York. There were 100 or more police in the vicinity according to Mr. Groebner. While Mr. Groebner was watching, one of the protesters with a megaphone who was leading a group away to another location, was grabbed by unidentified Members of the RCMP. Mr. Groebner says that this created considerable excitement in the crowd and in the police. At that point the cameraman behind him had his camera within 6 inches of Mr. Groebner and Mr. Groebner pushed it aside. At that moment he was grabbed by three or four unidentified RCMP Members, put in plastic cuffs and taken to a vehicle where he was kept for several hours. He was read his rights and was told he was arrested for assault. One of his friends and the cameraman told police that there had been no assault but Mr. Groebner was kept in custody and was later told that he was arrested for breach of the peace. He was released at 2300 hours that day after being told that there would be no court proceedings against him.
>
> **Mr. Groebner wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for unlawful arrest.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971075

SUBJECT: Ms. Paulette Marchetti

On December 8, 1997, Ms. Marchetti, in her attached fax and in her telephone conversation complained to the Commission that:

> Basic rights of protesters at the University of British Columbia were violated when: the Tibetan flag was removed from the Graduate Student Society building; when protesters were pepper sprayed; when Jaggi Singh was arrested.
>
> **Ms. Marchetti wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for unnecessary use of force, unjustified use of powers.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

DOSSIER 2000-1-1
TO À H. Kostuck
INDEX
FILE CHARGED TO
DOSSIER CONSIGNÉ À H. Kostuck

Paulette Marchetti.

6 December 1997.

Dear Ms.Shirley Heafey,

I am writing to you to convey my deep shock and outrage over the RCMP's actions on the UBC campus during the APEC meetings. The specific RCMP's actions involved three separate incidents :- the removal of the Tibetan flag by the RCMP at the Graduate Student Society (GSS),the violent pepper-spraying by the RCMP of protesters at UBC,and the arrest of Jaggi Singh. In the first two situations it is clear that basic democratic freedoms,freedoms that are fundamental to our Canadian society were violated by the RCMP.

In regards to the removal of the Tibetan flag from the GSS, permission was granted by the RCMP for the Tibetan flag to be flown on the flagpole of that building. Moreover the decision within the GSS to fly the Tibetan flag was made democratically. However on 28 November two RCMP officers went to the Centre and removed the flag with out giving any reason to the staff. I am sure you have the details of the other two incidents. When I saw the pepper spraying of the demonstrators on TV and heard the accounts of the people there I was horrified at the way the RCMP acted. I hope you investigate these three situations,as I believe that there was a violation of basic rights of the people concerned.

Yours sincerely, Marchetti

97 DEC 8 AM 9 28

C.C.Prime Minister J.Chretien
Libby Davies M.P.
Svend Robinson M.P.

012913

COMPLAINT

File No. 2000-PCC-971078

SUBJECT: Mr. Gerald Wood

On December 8, 1997, Mr. Wood, in his attached fax, complained to the Commission that:

> The way the RCMP handled the protest at Gate 6 at the University of British Columbia campus was inappropriate and unnecessary. He also complains about the statement those arrested were asked to sign.
>
> **Mr. Wood wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for inappropriate and unnecessary use of force and illegal conditions of release imposed on those who were arrested.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

December, 7th. 1997

Mr. B. W. Agg,
RCMP complaints Commissioner,
FAX (604) 666-7362

Dear Sir:

I am writing to express my objections to the totally inappropriate way the RCMP handled the protest by students at UBC's gate 6. I feel that the RCMP acted too quickly after giving an order to move back and the use of pepper spray was not necessary. Also, I am no lawyer but I question the legality of the statement those arrested were asked to sign.

Democracies and human rights are not necessarily lost over night but are often eroded away bit by bit. I realise that the RCMP were probably under a lot of pressure from government but as long as a person is not harming property or physically assaulting another person he or she should have the right to stand with a sign protesting any perceived wrong without fear of physical abuse by the RCMP.

In my opinion the RCMP owe Canadians an apology for the roughshod way this was handled.

Yours sincerely,

DEC 08 1997

Gerald Wood

RCMP Public Complaints Commission | **Commission Des Plaintes Du Public Contre La GRC**

RCMP PUBLIC COMPLAINT

I COMPLAINANT

Inquiry No. 2100-E97295

Complaint File No. 2000-PCC-971148

Complainant Information	
Mr. Stuart Simpson DEC 29 1997	Residence: Work: Fax:

II INCIDENT

Date	Time	Place
November 25, 1997	Unknown	Vancouver, ~~Alberta~~ BC

(A) Circumstance

On November 28, 1997, Mr. Simpson contacted the Commission and supplied the following information:

On November 25, 1997, while watching the evening television news, Mr. Simpson saw a television cut of a RCMP officer on duty at the APEC conference in Vancouver. This officer was carrying a black canister abou the size of a medium sized fire extinguisher and was waiving it around in a semi-circular motion sprayin crowd about eight feet away from him. Mr. Simpson believes that from the reaction of the crowd the offic was dispelling capsicum spray. Eventually, from the image on the television screen, it appeared to M Simpson that the officer had sprayed the camera and the cameraman.

(B) Allegation(s)

Allegations against Constable Unknown #1 of the Vancouver Detachment, "E" Division:

- *B - Improper Use of Force:* Mr. Simpson is of the opinion that the officer's use of the capsicum spray w indiscriminate and an excessive use of force. That the officer(s) gave the appearance of being poorly trained crowd control and that their actions have imparted to the rest of the world that we, as Canadians, act the san way here as they do in Peking, Indonesia and Korea.

Signature: ____________ (Name)

Date: Dec 17/97

The information contained in this complaint was received by the RCMP Public Complaints Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act.

File Number: 2000-PCC-971148 **Complainant Name:** Stuart Simpson

A. PCC MANAGEMENT

Previous File(s)	Third Party	Federal/Contract	Investigator	Office
	NO	Contract	Sam Hogg	Edmonton

Dates	**Date Sent to RCMP**
Initial Contact: November 28, 1997	
Official Complaint Date: December 29, 1997	**Complaint sent to RCMP:** December 29, 1997
Official Review Date:	**Request for Relevant Materials:**

Complainant Information

Mr. Stuart Simpson	Residence: Work: Fax:

II INCIDENT

Date	Time	Place
November 25, 1997	Unknown	Vancouver, British Columbia

(A) Circumstance

On November 28, 1997, Mr. Simpson contacted the Commission and supplied the following information:

On November 25, 1997, while watching the evening television news, Mr. Simpson saw a television cut of an RCMP officer on duty at the APEC conference in Vancouver. ***Staff Sgt Hugh Stewart*** was carrying a ***red and*** black canister about the size of a medium sized fire extinguisher and was waiving it around in a semi-circular motion spraying a crowd about eight feet away from him. Mr. Simpson believes that from the reaction of the crowd the officer was dispelling capsicum spray. Eventually, from the image on the television screen, it appeared to Mr. Simpson that the officer had sprayed the camera and the cameraman.

(B) Allegation(s)

Allegations against Constable Unknown #1 of the Vancouver Detachment,"E" Division:

- *B - Improper Use of Force:* Mr. Simpson is of the opinion that the officer's use of the capsicum spray was indiscriminate and an excessive use of force. That the officer(s) gave the appearance of being poorly trained in crowd control and that their actions have imparted to the rest of the world that we, as Canadians, act the same way here as they do in Peking, Indonesia and Korea.

PROTECTED

COMPLAINT

File No. 2000-PCC-980157

SUBJECT: Mr. Randy Lowe

On December 1, 1997, Mr. Lowe, in the attached complaint, complained to the Commission that:

> During the APEC conference at the University of British Columbia he saw TV news coverage that showed excessive use of pepper spray by Staff Sergeant Stewart of the Vancouver Detachment of the RCMP.
>
> **Mr. Lowe wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stewart of the Vancouver, B.C. RCMP Detachment for improper use of force.**

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

RCMP Public Complaints Commission | **Commission Des Plaintes Du Public Contre La GRC**

RCMP PUBLIC COMPLAINT

I COMPLAINANT

Inquiry No. 2100-E97297

Complaint File No.

Complainant Information Mr. Randy Lowe	Residence: Work: Fax:

II INCIDENT

Date	Time	Place
November 25, 1997	Unknown	Vancouver, British Columbia

(A) Circumstance

On December 1, 1997, Mr. Randy Lowe contacted the Commission and supplied the following information:

During the APEC conference in Vancouver, while watching the evening television news, Mr. Lowe obser an RCMP officer identified as Staff Sergeant Stewart spraying a number of persons with pepper spray. Th persons appeared to be demonstrating peacefully. Mr. Lowe states that he is supportive of the RC however, he strongly believes that persons have the right to demonstrate peacefully.

(B) Allegation(s)

Allegations against Staff Sergeant Stewart of the Vancouver Detachment, "E" Division:

- *B - Improper Use of Force:* Mr. Lowe is of the opinion that under the apparent existing circumstances, use of pepper spray by Staff Sergeant Stewart on persons demonstrating peacefully, amounted to excessive of force.

:

Signature: ______________________ Date: ______________________
(Name)

The information contained in this complaint was received by the RCMP Public Complaints Commission, pursuant to paragraph 45.35(1)(a) of the RCMP Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971106

SUBJECT: Kay Stockholder

On December 8, 1997, Ms. Stockholder, in her attached fax, complained to the Commission that:

> The actions of the RCMP prevented students and others on the University of British Columbia campus from carrying out peaceful protests during the recent APEC conference in Vancouver. Ms. Stockholder requests that the RCMP Public Complaints Commission institute a hearing into certain actions of the RCMP at the University of British Columbia.
>
> **Ms. Stockholder wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the RCMP for oppressive conduct.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

british
columbia
civil liberties association

425 · 815 WEST HASTINGS STREET, VANCOUVER, B.C. V6C 1B4 · TEL: (604) 687-2919

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David Suzuki

December 8, 1997

Shirley Heafey
Chair
RCMP Public Complaints Commission
P.O. Box 3423, Station "D"
Ottawa, Ontario K1P 6L4

Dear Ms. Heafey,

I am writing on behalf of the B.C. Civil Liberties Association to request that the RCMP Public Complaints Commission institute a hearing under section 45.43 of the *RCMP Act* into certain actions of the RCMP at the University of British Columbia during the recent APEC conference in Vancouver.

The actions of the RCMP which we ask the Commission to inquire into are those which prevented students and others on the UBC campus from carrying out peaceful protests, where the individuals were not inside, or threatening the integrity of, security fences around official APEC sites and motorcade routes on the campus. Examples of these include, but are not limited to:

(1) the arrest of persons for refusing to take down signs of protest;

(2) the threat to arrest persons unless they took down a sign or flag;

(3) the removal of protest signs by RCMP members;

(4) the requirement of persons who were arrested to agree to certain conditions in order to be released from custody;

(5) the creation of broad security zones around APEC sites and motorcade routes so braod as to prevent signs and sounds from being visible or audible to APEC delegates;

(6) the erection of security fences at some distance from APEC sites and motorcade routes which prevented signs and sounds from being visible or audible to APEC delegates; and

(7) the restriction of protesters to official protest sites too small for their numbers.

In our opinion, the above actions of the RCMP violated the freedom of expression, freedom of peaceful assembly and freedom of association rights of individuals, contrary to sections 2 (b), (c) and (d) of the *Charter of Rights and Freedoms*.

There have been widely reported allegations that in carrying out the above actions, individual RCMP members were not acting on their own, but in accordance with policy or directives. Further, there have been allegations that the policies or directives (if there were such) under which the RCMP acted either originated from, or received approval from, senior government officials outside the RCMP, including officials from the Office of the Prime Minister. If these allegations are true, then the RCMP has been used -- and allowed itself to be used -- for purely political purposes.

The use -- or threat of the use -- of the RCMP's powers of arrest, search and detention for purposes other than enforcing the law or protecting citizens' rights is simply intolerable in a free and democratic society. Therefore, we specifically request that the Commission inquire into the existence of any policies or directives under which the RCMP were operating in carrying out the above-noted actions, and the source or approval of those policies or directives.

The RCMP Public Complaints Commission is the agency which Canadians have created to act as a civilian oversight body for the RCMP. Its mandate is (among other things) to ensure that in examining complaints against the RCMP, consideration is given to the public interest in the fair and proper enforcement of the law. The use of force, arrest and detention to quash lawful political protest is the very antithesis of the proper enforcement of the law. If there is any agency in Canada which has, or ought to have, the authority to discover whether the above allegations are true, and to what extent the RCMP were used for political purposes in stamping out the UBC students' lawful protests, it is the RCMP Public Complaints Commission.

The conduct of the RCMP at UBC during APEC raises issues about the protection of civil liberties in Canada as serious as those raised by the federal government's use of the *War Measures Act* in the early 1970's. We understand that many complaints have now been filed with the RCMP and with the Commission. Given the seriousness of the allegations, it is not a sufficient response for the Commission passively to wait until the RCMP investigations are complete, accept whatever appeals from the RCMP's official response individuals might decide to bring to the Commission, and investigate these. Rather, we expect the Commission to enquire particularly into the basic policies that were responsible for the initial configuration of security zones. These arrangements set the stage for the unfortunate events which followed, incidents that have received wide coverage in the media. Citizens from all walks of life need to be assured that the issues raised are receiving the serious attention of the Commission, that the Commission's investigation gets to the bottom of the matter, and that the Commission's formal response fits with the evidence. Nothing short of a public inquiry could satisfy that need.

The B.C. Civil Liberties Association therefore urgently requests the Commission to institute a public hearing into the policies that determined the security arrangements at UBC, the conduct of the RCMP in preventing peaceful protests on the UBC campus during the APEC conference, any policies under which the RCMP acted, and the ultimate source of those policies.

Sincerely yours,

for Kay Stockholder
President

cc. Solicitor General of Canada
Commissioner of the RCMP

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PROTECTED

COMPLAINT

File No. 2000-PCC-980159

SUBJECT: Mr. Randy Lippert

On December 18, 1997, Mr. Lippert, in his attached letter, complained to the Commission that:

> The conduct of unidentified Members of the RCMP was oppressive during the APEC conference at Vancouver in late November, 1997.
>
> **Mr. Lippert wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the Vancouver, B.C. RCMP Detachment for oppressive conduct.**

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

December 5, 1997

Mr. Randy Lippert

FILE
DOSSIER

TO
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INDEX

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[illegible] CONSIGNÉ A

RCMP Public Complaint Commission
P.O. Box 3423
Station 'D'
Ottawa, On.
K1P 6L4

Dear Chairperson:

The actions of the RCMP during the APEC Conference in Vancouver in late November have shocked me, the Canadian public, and undoubtedly citizens of other Western nations. These actions were illiberal and unnecessarily violent in character. Furthermore, rumour has it that these actions as seen in the media and reported by protest participants and bystanders were, in fact, directed by the office of the Prime Minister. If this allegation is true this is equivalent to the use of the police by political authorities for political purposes, a very serious situation in a liberal democracy like Canada that is supposedly protected by the Charter of Rights and Freedoms. It is particularly distressing to know that one of the peaceful protesters and victims of the RCMP's very questionable actions in this instance was a student who attends and lives at UBC, a public institution where free speech and protest is permitted and even encouraged. It is indeed ironic that the protest that the RCMP apparently sought to crush by the arbitrary use of force was centred directly on human rights violations in other countries.

As a Canadian citizen I strongly urge you to initiate an independent public inquiry or review into what occurred in this instance, not in an attempt to necessarily lay blame on the RCMP as an organization or on certain members of the force, or to serve the interests of a particular political party, but instead on behalf of the Canadian public to find out what happened in a larger sense, the serious issues it raises, and to ensure that these decidedly illiberal and sickening actions never take place on a university campus or elsewhere in our nation again. At a minimum the inquiry should look into whom the RCMP were receiving their directions from and the larger issue of the use of the RCMP or other police forces for political purposes. As you are aware, it is no longer adequate for the RCMP to merely apologize or to hold an internal review in light of these very serious allegations, though such responses do show that even senior representatives of the RCMP recognize that something very serious occurred in this instance. If there ever has been a need for an inquiry or review to be ordered by the chairperson of the RCMP Public Complaint Commission it is in relation to the RCMP's activities at the APEC Conference in late November, 1997 in Vancouver, British Columbia. The long tradition of liberal governance in Canada demands that you act.

97 DEC 18 AM 9 34

Sincerely Yours,

Randy Lippert

COMPLAINT

File No. 2000-PCC-971100

SUBJECT: Mr. Eric Wyness

On December 11, 1997, Mr. Wyness complained to the Commission that:

> From his own observations and from media reports he has formed the opinion that the reputation of the RCMP was seriously damaged when some Members used force to deprive Canadian citizens of their right to make peacefull protests during the APEC Conference. He does not want these members of the RCMP to think they got away with depriving citizens of their rights.
>
> **Mr. Wyness wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified members of the University of British Columbia RCMP Detachment for oppressive conduct.**

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971102

SUBJECT: Mr. Barry Faires

On December 11, 1997, Mr. Faires complained to the Commission that:

> According to media reports he believes the RCMP security forces at the APEC conference went beyond protecting the visitors and denied Canadian citizens from exercising their democratic rights to make peaceful protests. He believes the peaceful protesters should have been protected, not attacked.
>
> **Mr. Faires wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for oppressive conduct.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971103

SUBJECT: Mr. Mark Brooks

On December 11, 1997, Mr. Brooks complained to the Commission that:

> Between 1500 and 1600 hours on November 25, 1997 he was with a group of about 50 protesters who were near the Gate 6 entrance to the University of British Columbia on South West Marine Drive, Vancouver, B.C. They were on the other side of a barricade from about 20 RCMP Members. For about an hour the group talked among themselves and at one point, Mr. Brooks asked the RCMP Members to give due warning if the road was going to be cleared because some of the protesters did not wish to be arrested and would leave. Mr. Brooks said that the crowd were not angry at the police and there were no comments on either side.
>
> When a large increase in the number of RCMP Members became evident, staff Sergeant Stuart came through the barricade and announced that they would be clearing the road using any means necessary and with no warning the Staff Sergeant started pepper spraying protesters at point blank range, followed by other RCMP Members doing the same. Mr. Brooks says there was pandemonium among the protesters and there had been no opportunity for an orderly exit from the area. People were being pepper sprayed as they were trying to leave. Mr. Brooks says that there had been no attempt to remove the blockade by any other means.
>
> As the crowd was moving away from Marine Drive they were pursued by RCMP Members using pepper spray. Mr. Brooks, who had a megaphone realized that people were angry and very upset at the way they had been treated so he asked the crowd to stay calm and not make it any worse. He said that at that time he was about twenty meters from Marine drive moving away with the

crowd when he was tackled from behind, grabbed by Staff Sergeant Stuart and received a point blank pepper spray in the face.

Mr. Brooks says he was arrested and taken to the University RCMP Detachment where he was told he was charged with inciting a riot and obstruction. Within ten minutes he was told these charges were dropped and he was then told he was charged with breach of the peace. He and other arrested persons were told they were going to be held until the protests for that day were over and then they were taken to the City of Vancouver gaol. Mr Brooks was released at about 2330 hours. He had not been given any formal advice that he was charged with an offence.

Mr. Brooks would like to know the name of his arresting officer. He says that he and three other people who were put into a police vehicle after being pepper sprayed, were given only a little water from a bottle half an hour after being sprayed. Two of the others were already screaming for relief when he was placed in the vehicle. He was not read his rights until an hour and a half after being arrested.

Mr. Brooks wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stuart and unidentified Members of the University of British Columbia RCMP Detachment for: unnecessary use of force; excessive use of force; assault; unlawful arrest; unnecessary detention; failure to care properly for a prisoner.

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971107

SUBJECT: Christine Singh

On December 12, 1997, Ms. Singh complained to the Commission that:

> At about 1600 hours on November 25, 1997 she was one of about 30 to 40 protesters on Marine Drive near Gate 6 to the University of British Columbia campus. There were about 15 RCMP Members on the other side of a barricade but there was a calm atmosphere between the protesters and the RCMP. A number of the protesters had asked the RCMP to give warning if the road was to be cleared.
>
> When about 20 more RCMP Members arrived on the scene they marched toward the protesters. Staff Sergeant Stuart announced his name and said something to the effect that he was going to clear the road. Simultaneously, RCMP Members came through the barricade and started spraying with pepper spray. Ms. Singh was sprayed and was getting up to leave but was physically hustled off the road. She says she did not need to be. Some protesters were handled roughly and were arrested. One of her friends was sprayed directly in the face and was arrested. She says it was one and a half hours before he was able to wash his eyes.
>
> Ms. Singh says that after they were away from Marine Drive they were still being sprayed even though there was a police line that barricaded the road. Ms. Singh says that she was assaulted, her right to protest was denied, no attempt was made to move the protesters peacefully and police used unnecessary force.
>
> Ms. Singh wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stuart and unidentified

Members of the University of British Colubia RCMP Detachment for assault, unnecessary use of force, denial of the right to protest.

This complaint was received by B.W. Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-971111

SUBJECT: Mr. David Olsen

On December 16, 1997, Mr. Olsen, in his attached fax, complained to the Commission that:

> On November 25, 1997 at the University of British Columbia, during the APEC conference unidentified Members of the RCMP conducted exaggerated and aggressive reaction to peaceful demonstrators, used unnecessary violence and unnecessarily arrested people, made excessive use of pepper spray, stole a walkie talkie from a demonstrator, abducted two people from within a group of demonstrators, unlawfully arrested a person for assault and vented irresponsible, unprofessional and misplaced anger against peaceful demonstrators.
>
> **Mr. Olsen wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the RCMP for: improper attitude; improper use of force; unlawful arrests; theft of a walkie talkie.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

97 Q 189.

ETHICAL ENVIRONMENTAL CONSULTANTS
Suite 110, 90 East 11th Avenue, Vancouver, BC V5T 2B8 Phone/Fax: (604) 877-0605
e-mail: dave_olsen@sfu.ca

FAX

RECEIVED
1997

TO: Complaints Commissioner
BC Police Commission
FAX: 660-1223

15 December 1997

FROM: Dave Olsen
Ethical Environmental Consultants

Number of Pages: 2
(including this page)

Dear Commissioner,

I would like to officially lodge my complaint with you concerning the RCMP's and the Vancouver Police Department's reaction to the non-violent demonstration on the campus of the University of British Columbia on 25 November 1997. I witnessed the reaction of the police to the students wishing to (peacefully) arrest General Suharto of Indonesia for crimes against humanity in the morning (between 9:15 and 10:30 am at Chancellor Boulevard) as well as the larger demonstration that began on the Main Mall of the campus shortly after 1 pm and continued until just after 4 pm at three different locations (Chancellor Boulevard, SW Marine Drive, and NW Marine Drive).

The reaction of the police to the students in the morning was exaggerated and aggressive. I witnessed at least 5 people being wrestled to the pavement and handcuffed violently. It is important to realize that the group of demonstrators had no weapons of any type and clearly had no means or desire to overcome the heavily armed police troops. They were also very clear in their intentions to be both non-violent and uphold the Canadian law that requires the arrest and fair trial of people suspected of crimes against humanity. I also witnessed the theft of at least one walkie-talkie from a demonstrator by the police. They simply grabbed it from a woman, and when she resisted, she too, was arrested.

The afternoon was even more incredible. I was very nearly hit with the highly toxic pepper spray that was used on many occasions and in great quantity. This was while I was standing out of the way and merely observing the events that were transpiring. Attack dogs were also less than 10 metres away from a clearly and proudly peaceful crowd that spent most of their time sitting on the ground. Once again, the people who were first arrested were handled in a very violent manner and thrown to the ground for no apparent reason other than to intimidate and vent irresponsible, unprofessional, and misplaced anger.

Later, at approximately 3:30 pm, the crowd moved peacefully down to the Chancellor

.../2

Boulevard entrance/exit to the APEC meeting grounds. At this point, I witnessed the abduction of at least two demonstrators *from within the crowd*. Police went into the crowd and pulled two people out at different times. The first man that was kidnapped had a mega-phone in his hand and was dragged along the ground by the neck and throat. Needless-to-say, the mega-phone was taken as well. The second man was similarly abducted, but was justified by the police as the arrest of an assault suspect. The police stated clearly that he had just assaulted a camera operator beside him. When questioned, the camera operator was shocked at such a charge and immediately denied that he had been assaulted. The charge was then changed after the fact and without release.

I did not witness the police response to the demonstrators blocking the exit at SW Marine Drive but I trust that you know that story by now. Clearly even more laws and civil liberties were broken by the people paid to protect and enforce them.

Therefore, I demand, as a lifelong and taxpaying citizen of Canada, that an official investigation be launched and implemented by individuals not associated with the federal government, the provincial government, the RCMP, or any other police organization. This is a matter that cannot be ignored or delayed.

Thank you for your quick response to me and for your work in facilitating this investigation.

Sincerely,

Dave Olsen

PROTECTED

COMPLAINT

File No. 2000-PCC-971130

SUBJECT: Anonymous

On December 18, 1997, a Concerned Canadian Citizen, in the attached letter, complained to the Commission that:

> At the University of British Columbia during the APEC conference, as seen on BCTV, RCMP Staff Sergeant Hugh Stewart, when spraying students with pepper spray, was totally out of control. The writer also requests that Staff Sergeant Stewart's supervisor be investigated for allowing such behavior to take place.
>
> **A Concerned Canadian Citizen wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Hugh Stewart of the University of British Columbia RCMP Detachment for unnecessary use of force, and against an unknown Member of the University RCMP Detachment for failing to apply proper supervision.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

ATTACHMENT

12/15/97

1270
DEC 18 1997

RCMP Public Complaints Commission
B.C. and Yukon Regional Office
670-840 Howe St.
Vancouver, B.C.
V6C 2E5

A couple of weeks ago while watching the News Hour on BCTV I was appalled as I watched a mature looking, grey haired, member of the Royal Canadian Mounted Police spraying students at UBC with pepper spray. Although the students were protesting, they were not, in my opinion, out of control. However, the manner in which the officer I have described, S/Sgt. Hugh Stewart, was dealing with this situation was totally out of control. I am requesting that a full and complete investigation be conducted regarding the actions taken by S/Sgt. Stewart. I am also requesting that his supervisor be investigated for allowing such behavior to take place. After witnessing this public display of uncontrollable behavior, I asked myself how I, or any Canadian citizen, could ever again refer to this police force as "Canada's Pride".

A Concerned Canadian Citizen

PROTECTED

COMPLAINT

File No. 2000-PCC-971127

SUBJECT: Mr. Michael Croteau

On December 18, 1997, Mr. Croteau, in his attached letter, complained to the Commission that:

> From reports he has received from the news media and from individuals, there were instances at the APEC conference at the University of British Columbia when Members of the RCMP attacked students with pepper spray and, when some students were detained, they were not released until they signed a statement giving up their rights.
>
> **Mr. Croteau wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for excessive use of force and oppressive conduct.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

ATTACHMENT

Michael F.D. Croteau

December 15, 1997

Royal Canadian Mounted Police
Public Complaints Commission
#670 - 840 Howe Street
Vancouver, BC
V6Z 2L2

To Whom it may concern,
Re: APEC 97 Security Arrangements

I was present at the Vancouver Art Gallery when Jiang Zemin arrived for an unpublicized visit later that day. After our peaceful protest I recall the police officer in charge came out into our crowd and shook hands with many of us. When I returned home that night I raced upstairs to my computer. Later that night I submitted my account of the day to the World Tibet Network News that is an e-mail news published by the Canada-Tibet Committee. My story was accepted and published world-wide the very next day!

I was so proud of our police and other forces present that day. The newscasts from BCTV that Sunday told of how great it was that we lived in a country where police respond with mountain bikes and not with weapons. Many of the officers we were facing spoke kindly to us and some even discretely commented at their embarrassment being there guarding a man like Jiang Zemin. At one point a heckler from the street shouted over my girlfriend's shoulder, "Are you gonna arrest anybody?" An officer replied, "Why these are nice people."

Imagine my shock on Wednesday the 26 of November when I heard the reports of what had happened at UBC. Even more upsetting was Mr. Cretien's comment about the use of pepper spray. I jumped out of bed and typed a letter to him that my girlfriend faxed immediately to his office. I truly believe the police could have dealt with the students in a much more civilized manner -- why were they not simply arrested? All available officers were reported to have been 'on-duty' for the duration of the APEC 97 event.

I have read the reports in the Vancouver Sun that detail the official responses to many of the questions surrounding the whole affair at UBC. Many news articles are now quoting the president and vice-president and other faculty members of UBC who are saying there was interference from the Prime Minister's Office.

Interference or not I cannot believe your officers would just blindly follow the orders of the PMO.

1269

...2

DEC 18 1997

Royal Canadian Mounted Police
Public Complaints Commission
#670 - 840 Howe Street
Vancouver, BC
V6Z 2L2

What disturbs me the most is that several of my friends have told me they saw the same officer who was in charge on the 23rd on the UBC Campus two days later. Many reports say he was there with a 'fire-extinguisher size' can of pepper spray attacking the students. (I use the word attack because I cannot accept the use a restricted weapon on Canadians by our own police.)

It's great to see Craig Jones standing up for his rights. Many of the students who were present that day will do not have the desire nor the resources to follow in his footsteps so I applaud his actions. While listening to CBC's Early Edition I recall an RCMP officer commenting about Mr. Jones' incident. At the end of the interview that officer admitted he himself was not even present to witness it.

But what really upsets me is the B.C. Civil Liberties report that the RCMP made protestors who had been detained to sign away their rights. They were not to "participate or be found in attendance at any public demonstration or rally that has gathered together for the purpose of demonstrating against the Asia Pacific Economic Cooperation or any nation participating in the so named conference." How can the RCMP legally suppress the rights to assembly, association and expression of my fellow citizens?

Does the RCMP now have legal authority to over-write the Canadian Charter of Rights? I thought the RCMP where supposed to be independent of the government and not subject to its influence.

I cannot help wonder what officers involved were saying to their children the next day. As they sat around the table having breakfast with their families I imagine it was fairly quite. It is going to take a lot of work by the PR people at Disney to help repair the tarnished image of the RCMP. The unofficial motto "We always get our man", seems all too true when you see news video of cayenne pepper spraying aimlessly over a crowd of unarmed students.

I am ashamed of the RCMP's handling of the APEC/UBC student protestors and I would like to see an independent public inquiry into the matter – not an internal one. The RCMP must be held accountable for its actions and judged independently.

Sincerely,

Michael Croteau, a concerned citizen.

Michael F.D. Croteau

December 31, 1997

No 2nd pg.
in lg. binda

Mr. B. W. Agg, Investigator
RCMP Public Complaints Commission
#670 - 840 Howe Street
Vancouver, BC
V6Z 2L2

Re: File No. 2000-PCC-971127

Dear Sir,

Thank you for your letter of December 19, 1997 acknowledging my complaint to the RCMP Public Complaints Commission regarding RCMP conduct during the APEC 97 event on the University of British Columbia (UBC) grounds.

After carefully reviewing videotaped CBC News footage I would like to amend my complaint which has been given the File No. 2000-PCC-971127 by your office. You noted on the PROTECTED complaint "Mr. Croteau wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified members of the University of British Columbia RCMP Detachment for excessive use of force and oppressive conduct."

I would like to lodge a complaint against RCMP Staff Sergeant Hugh Stewart. I have reviewed the footage from Tuesday November 25, 1997 taken at 3:40 PM on the UBC ground near the motorcade route for the APEC 97 leader's motorcade. Staff Sergeant Stewart did not allow the student group any time at all to react to his statement and immediately started spraying pepper spray onto the students. Staff Sergeant Stewart did not attempt to seek assistance from additional manpower to peacefully arrest or remove the demonstrators. I believe he acted in an unreasonably aggressive manner towards students who were peacefully demonstrating by obstructing the proposed traffic route.

The audio track of the CBC News video tape clearly recorded Staff Sergeant Hugh Stewart saying to the students " ... you have one opportunity to clear this road ..." Without giving the demonstrators his previously mentioned "opportunity", his next words were "I intend to clear this road and clear it now." At that moment he raised a large red canister and began to shoot cayenne pepper spray indiscriminately at the students seated on the ground as well as those who were attempting to walk away. The CBC News cameraman was even sprayed as were persons watching from the side of the road away from the actual scene.

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01-010
JAN 0 5 1998

Michael F.D. Croteau

FILE
DOSSIER 5510-19971127
TO
À C. Rigal
INDEX
FILE CHARGED TO
DOSSIER CONSIGNÉ À

January 29, 1998

Shirley Heafey, Chair
RCMP Public Complaints Commission
PO Box 3423, Postal Station "D"
Ottawa, Ontario, K1P 6L4

Dear Ms. Heafey,

Last month I wrote a complaint to the RCMP Public Complaints Commission in Vancouver. My complaint was about actions of the RCMP during the APEC '97 at University of British Columbia on November 25, 1997. I was issued a case number, File No. 2000-PCC-971127.

Earlier this week I received a phone call from Mr. D.A. Brigadear, RCMP Internal Affairs, RCMP, RCMP, 657 - W 37th, Vancouver, BC, V5Z 1K6, and he informed me that a full internal investigation was underway. He said that due to the high number of complaints lodged with your commission an Internal RCMP Investigation is now underway. However correct he is, I would like to ask that this matter be also investigated with a full public inquiry by an independent committee.

This investigation is far too important to investigate only the accountability of the RCMP. Media reports into the intervention APEC '97 would seem to indicate a much greater level of interference than the RCMP alone can achieve. I have heard news stories naming the Prime Minister's Office and the Office of the President of the University of British Columbia as being involved in interfering with an existing security agreement.

These other allegations must be investigated:

- police prohibited protest signs (even flags) anywhere within view of APEC leaders [apart from a small "protest area" at a peek-a-boo site nearly 70 meters from their motorcade route];
- unlawful assaults by police including pepper-spraying of by-standers and of protesters complying with police orders;
- Repeated rumours - sometimes attributed to police sources - that the Canadian government had insisted on a "no-protest" policy.
- law-abiding Canadian citizens were arrested or threatened with arrest on entirely spurious grounds.
- police officers told Canadian citizens that the University of British Columbia was a "Charter Free" zone on November 25th.

I was present at the Vancouver Art Gallery when Jiang Zemin arrived for an unpublicized visit on November 23, 1997. After our peaceful protest I saw the police officer in charge, RCMP Staff Sergeant Hugh Stewart, come out into our crowd and shake hands with many of us.

... 2

January 29, 1998

Shirley Heafey, Chair
RCMP Public Complaints Commission

When I returned home that night I raced upstairs to my computer and submitted my account of the day to the World Tibet Network News, an e-mail news service published by the Canada-Tibet Committee. My story was accepted and published world-wide the very next day!

I was so proud of our RCMP and other security forces who were present that day. The newscasts of British Columbia Television (BCTV) on November 23, 1997 were so positive. They said how great it was that we lived in a country where police respond with mountain bikes and not with weapons. At one point during our protest a heckler from the street shouted over my girlfriend's shoulder, "Are you gonna arrest anybody?" An officer replied, "Why, these are nice people."

Imagine my shock on Wednesday the 26 of November when I heard the reports of what had happened at UBC. I truly believe the police could have dealt with the students in a much more civilized manner -- why were they not simply arrested? All available officers were reported to have been 'on-duty' for the duration of the APEC 97 event. When I finally saw the CBC News video of the incident it was RCMP Staff Sergeant Hugh Stewart who I first noticed. With a giant can of pepper spray and he was using it on the protesters -- the same person whom I saw three days before and had revered as a "true Canadian."

I have heard many say that because of the protesting at the Vancouver Art Gallery the Canadian government demanded that protesting be limited. It was reported that many of these world leaders would not have participated unless our Prime Minister's Office assured them that human rights would not be an issue at this APEC event?

To quote UBC Law Professor, W. Wesley Pue, 'Very important questions need to be answered. Senior police officers need to account for themselves. So does the political apparatus.'

Please Ms. Heafey, allow for a complete public inquiry into this whole affair before Canada's RCMP and political images are to suffer anymore. Canadians need to be assured that our politicians and our police have our best interests at hand.

Thank you very much for your time.

Sincerely,

Michael FD Croteau

PROTECTED

COMPLAINT

File No. 2000-PCC-980008

SUBJECT: Mr. Michael Croteau

On January 5, 1998 Michael Croteau complained to the Commission that:

> On November 25, 1997 Staff Sergeant Stewart acted in an unreasonably aggressive manner towards students on the UBC campus who were peacefully demonstrating by obstructing a proposed traffic route for members and participants in APEC events. The Staff Sergeant failed to provide the demonstrators with an opportunity to respond to his statement and "pepper-sprayed" them, including those who were attempting to walk away from the scene.
>
> **Michael Croteau wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stewart of the UBC, B.C. RCMP Detachment regarding excessive force.**

Please Note: A copy of Mr. Croteau's letter of compaint is attached.

This complaint was received by Donna Horton, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Michael F.D. Croteau

December 31, 1997

Mr. B. W. Agg, Investigator
RCMP Public Complaints Commission
#670 - 840 Howe Street
Vancouver, BC
V6Z 2L2

No 2nd pg.
in lg. binda

Re: File No. 2000-PCC-971127

Dear Sir,

Thank you for your letter of December 19, 1997 acknowledging my complaint to the RCMP Public Complaints Commission regarding RCMP conduct during the APEC 97 event on the University of British Columbia (UBC) grounds.

After carefully reviewing videotaped CBC News footage I would like to amend my complaint which has been given the File No. 2000-PCC-971127 by your office. You noted on the PROTECTED complaint "Mr. Croteau wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified members of the University of British Columbia RCMP Detachment for excessive use of force and oppressive conduct."

I would like to lodge a complaint against RCMP Staff Sergeant Hugh Stewart. I have reviewed the footage from Tuesday November 25, 1997 taken at 3:40 PM on the UBC ground near the motorcade route for the APEC 97 leader's motorcade. Staff Sergeant Stewart did not allow the student group any time at all to react to his statement and immediately started spraying pepper spray onto the students. Staff Sergeant Stewart did not attempt to seek assistance from additional manpower to peacefully arrest or remove the demonstrators. I believe he acted in an unreasonably aggressive manner towards students who were peacefully demonstrating by obstructing the proposed traffic route.

The audio track of the CBC News video tape clearly recorded Staff Sergeant Hugh Stewart saying to the students " ... you have one opportunity to clear this road ..." Without giving the demonstrators his previously mentioned "opportunity", his next words were "I intend to clear this road and clear it now." At that moment he raised a large red canister and began to shoot cayenne pepper spray indiscriminately at the students seated on the ground as well as those who were attempting to walk away. The CBC News cameraman was even sprayed as were persons watching from the side of the road away from the actual scene.

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01-010
JAN 05 1998

Michael F.D. Croteau

January 26, 1998

971127

D. A. Brigadear, Internal Affairs
Royal Canadian Mounted Police
657 - W 37th
Vancouver, BC
V5Z 1K6

Dear Sir,

As per our telephone conversation this afternoon I am sending you and the RCMP Public Complaints Commission a letter to clarify the contents of my last correspondence with the RCMP PCC.

The letter was dated December 31, 1997 and was an amendment to my original letter dated December 15, 1997 concerning my complaint File No. 2000-PCC-971127.

I received a letter from Donna Horton, RCMP Public Complaints Commission, dated January 8, 1998, acknowledging receipt of my December 31, 1997, letter but it has mistakenly be given a separate file number: 2000-PCC-980008.

Please let the record show that I sent the second letter to amend my original complaint and close the second file (2000-PCC-980008) that was mistakenly opened.

I hope that your investigation will bring to light the details surrounding this horrible event. I trust that those officers who are found guilty of wrongdoing will be dealt with in a proper manner by the law. Although they are responsible for their own actions please be sure you investigate any factors which have may influenced those members of the RCMP and their superior officers. Please do not forget those who were politically responsible for security at APEC and the University of British Columbia. The Prime Minister's Office and the Office of the UBC President should also be investigated.

Thank you and good luck with your task.

Sincerely,

Michael Croteau

cc: RCMP PCC, #670 - 840 Howe Street, Vancouver, BC, V6Z 2L2

02-00
FEB 02 199

PROTECTED

COMPLAINT

File No. 2000-PCC-971151

SUBJECT: Mr. Bill Johnson

On December 29, 1997 Bill Johnson complained to the Commission that:

> On November 25, 1997 Inspector Dingwall and unidentified members of the RCMP authorized and/or ordered members of the RCMP to commit illegal actions including the illegal arrest and detention of Craig Jones, illegal seizure of signs, and illegal trespassing. Mr. Johnson also points out that RCMP members "illegally wrestled" Mr. Jones to the ground.
>
> **Bill Johnson wishes to lodge a complaint concerning the conduct in the performance of duties against Inspector Dingwall and unidentified members of the UBC RCMP Detachment regarding their illegal actions.**

Please Note: A copy of Mr. Johnson's letter of complaint is attached.

This complaint was received by Donna Horton, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

DEC 17 1997

December 13,

FILE DOSSIER 2000-1-1
TO A H. Kostuch
INDEX
FILE CH. DOSSIER C.

Attention: Chairman
RCMP Public Complaints Commission
P.O. Box 3423, Station 'D'
Ottawa, Ontario K1P6L4

I am writing to demand a full independent public inquiry into the deplorable and reprehensible actions of the PMO and the RCMP on November 25, 1997, when Craig Jones was arrested illegally by the RCMP for exercising his constitutional right of freedom of protest. The signs saying "Democracy" and "Free Speech" were illegally seiz by the RCMP who were also illegally trespassing on his prope without just cause, and then illegally wrestled him to the ground, handcuffed him and incarcerated him for refusin to give them his signs. He was perfectly within his rights. The actions of Inspector Dingwall and those superiors who authorized and ordered him to commit these illegal actions are a violation of the rights of every citizen of this "democracy" called Canada and are an insult and an effront to all Canadians. I call for an immediate suspension of Inspector Dingwall and his superiors behind this conspi - without pay, including the Prime Minister of Canada, i it is determined that he directly intervened. If this is indeed the case, I call for his immediate impeachment, and dishonorable discharge to all RCMP involved. I also call for criminal charges to be laid against all guilty parties.

Bill Johnson

PROTECTED

COMPLAINT

File No. 2000-PCC-971152

SUBJECT: Mr. Dennis McIvor

On December 29, 1997 Dennis McIvor complained to the Commission that:

> On November 25, 1997 (Staff) Sergeant Stewart committed criminal acts during APEC in Vancouver , B.C.
>
> **Dennis McIvor wishes to lodge a complaint concerning the conduct in the performance of duties against Staff Sergeant Stewart of the UBC, B.C. RCMP Detachment regarding his illegal actions during APEC.**

Please Note: A copy of Mr. McIvor's letter of complaint is attached.

This complaint was received by Donna Horton, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Dennis Lorne McIvor

FILE
DOSSIER 1325-1-4
TO
A C. Riopel
INDEX
FILE CHARGED TO
DOSSIER CONSIGNÉ À

December 17, 1997

R.C.M.P. Public Complaints Dept
Box 2423-Stn D
Ottawa,Ont K1P-6L4

Dear Sir/Madam,

I am writing to register a formal complaint against th behaviour of the RCMP at the APEC conference in Vancouver. Specifically the Sergeant in charge, I believe his name is Stewart.

It is a sad commentary on the state of this country when LEGAL protest is thwarted by gestapo like tactics displayed so shamefully by the KCMP.

want to see criminal charges brought to bear on this bully. As a citizen I demand it.

Sincerely,

Dennis McIvor

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PROTECTED

COMPLAINT

File No. 2000-PCC-980158

SUBJECT: Mr. Greg Kaufman

In his December 8, 1997 letter, Mr. Kaufman complained to the Commission that:

> On November 25, 1997 at the APEC conference in Vancouver, B.C. unidentified members of the RCMP used unnecessary force against peaceful student demonstrators.
>
> Mr. Kaufman wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the RCMP for unnecessary use of force.

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Syndicat des Etudiants de McMaster Inc.

FILE DOSSIER: 1325-1-4
TO A: C. Ruspel
INDEX
FILE [illegible]ED TO
DOSSIER CONSIGNÉ A

December 8, 1997

Hon. Andy Scott
Minister of the Solicitor General Canada
340 Laurier Avenue West,
Ottawa, Ontario
K1A 0P8

Dear Minister,

I am writing to express deep concern about the conduct of the Royal Canadian Mounted Police during the recent student protests in British Columbia. In particular, the McMaster Students Union condemns the RCMP's use of excessive force in dealing with student protesters on November 25, 1997. While we understand the need for security in such instances, it seems that in this case there was an unnecessary use of force applied to peaceful protesters.

In a country such as Canada, the right to peaceful protest should be protected with fervour. Without such protection, Canada is as guilty of human rights violations as those APEC countries which were the subjects of the B.C. student protests.

It is our hope that such conduct will not be tolerated by the federal government and that the matter will be duly investigated. I thank you in advance for your consideration.

Sincerely,

Greg Kaufman
President

cc: Rt. Hon. Jean Chretian, Prime Minister of Canada
Hon. Glen Clark, Premier and Minister Responsible for Youth of British Columbia
Mr. Preston Manning, Leader of the Official Opposition
M. Gilles Duceppe, Leader of the Bloc Québécois
Ms. Alexa McDonough, Leader of the New Democratic Party
Hon. Jean Charest, Leader of the Progressive Conservative Party of Canada
Mr. Stan Keyes, Member of Parliament, Hamilton West
M. Jean-Pierre Beaulne, RCMP Public Complaints Commission
Mr. Philip Murray, Commissioner of the Royal Canadian Mounted Police
Ms. Michelle Falardeau-Ramsay, Chief Commissioner, Canadian Human Rights Commission
Mr. Brad Lavigne, National Chairperson, Canadian Federation of Students
Mr R. Hoops Harrison, National Director, Canadian Alliance of Student Associations

Hamilton Hall, McMaster University, Hamilton, Ontario L8S 4K1, Canada Phone (905) 528-9887 Fax (905) 529-3208

COMPLAINT

File No. 2000-PCC-971155

SUBJECT: Ms. Deborah Simpson

On December 31, 1997 Deborah Simpson complained to the Commission that:

> The RCMP disregarded the principles of freedom to demonstrate and her right to have free speech during APEC activities on the UBC campus.
>
> **Deborah Simpson wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified members of the UBC, B.C. RCMP Detachment regarding their disregard of the principles of freedom to demonstrate and the right to have free speech during APEC activities on the UBC campus.**

Please Note: A copy of Ms. Simpson's letter of complaint is attached.

This complaint was received by Donna Horton, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

FILE
DOSSIER 1312 1-4
TO
A [illegible]
INDEX
FILE [illegible]
DOSSIER [illegible]

Ms. Shirley Heafey
Chairperson
PO Box 3423
Station D
Ottawa, Ontario
K1P 6I4
Fax: (613) 952-8045

November 29, 1997

Dear Ms Heafey,

I was shocked and disturbed by the behaviour of the RCMP at the recent student protests at UBC in Vancouver, BC. What truly amazes me is that our own values and principles of freedom to demonstrate and the right to have free speech are so quickly disregarded only to please a potential business partner. No wonder Presidents Jiang Zemin and Suharto do not feel pressure to improve human rights in their own countries. They do not see them being practiced here; in this so-called democratic country, oops, I mean 'economy'.

I was also confused and dismayed by the removal of the Tibetan flag at the Student Union building. Do we live in a democracy or not? Maybe trade liberalization is not going to promote human rights and democratic development in Asia as our leaders would like us to believe. Instead, it seems that we are losing ours.

Yours truly,

Deborah Simpson

Deborah Simpson

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013228

COMPLAINT

File No. 2000-PCC-980016

SUBJECT: Ms. Claire Veisseire

On January 12, 1998, Ms. Veisseire complained to the Commission that:

> On the afternoon of November 25, 1997 she was one of a group of protesters on North West Marine Drive near the Gate 6 entrance to the University of British Columbia. A group of RCMP Members were on the other side of a barrier. The protesters told the RCMP Members that they were conducting a peaceful demonstration and asked to be given time to move away if the RCMP wanted to clear the road. When additional RCMP Members arrived on the scene, led by an officer with short white hair, the protesters were told to move but before she could get up from where she had been sitting she was kicked and pepper sprayed. As she tried to move away she was thrown to the ground. Ms. Veisseire says there had been no discussion between the two groups of RCMP Members regarding the request of the protesters that they be given time to move off if the road was to be cleared.
>
> Ms. Veisseire says that she has recognized herself in a Television News picture of the event and has had the section taped.
>
> As the protesters were being chased up University Boulevard from Gate 6, Ms. Veisseire, and others, saw a young man emerging from the door of a nearby residence. He was approached by two unidentified RCMP Members who punched the young man in the face for no apparent reason. The young man had not been one of the protesters.
>
> **Ms. Veisseire wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of**

British Columbia RCMP Detachment for: assault; unjustified use of force; excessive use of force; oppressive conduct.

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-980017

SUBJECT: Mr. Ken White

Mr. White, in his attached fax of January 9, 1998 and telephone conversation of January 12, 1998, complained to the Commission that:

> While he was at the University of British Columbia campus on November 25, 1997 he observed unidentified Members of the University RCMP Detachment: use unreasonable force to arrest peaceful protesters; use violence to unnecessarily rip down a protest sign from a vehicle; intentionally shoot pepper spray at TV news media personnel; give 'kid glove treatment' to Indonesian secret service agents when arresting them while at the same time using violence when arresting peaceful protesters.
>
> Mr. White requests an investigation into the behaviour, during these events, of unidentified Members of the RCMP
>
> **Mr. White wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for: unreasonable use of force; unnecessay ripping down of a sign; unnecessary use of pepper spray; unnecessary arrest of peaceful protesters.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Jan 12, 97 Telephone to M^r White to receive this fax; but He was there late afternoon + @ two locations. @ UBC -

Dear Gail Prestash,

This is a letter of complaint of the behavior of the RCMP and Vancouver City Police at the UBC campu on Nov 25th 1997. I request a investig into this matter. It could be describ as a "Police Riot". Several police officers violently arrested a person who was very peac in which he just put a protest sign on h vehicle and several Police Officers came by and violently ripped the sign down fro his vehicle and then violently arresting him. Several Police officers with intentional inte were shooting pepper spray at the TV news media on the street. Several police officers violently arrested several individuals protesters using beyond reasonable force. I would like to add that four Indonesian secret Service a were given the "Kid glove treatment" by the RCMP when they were arrested. I request a formal investigation

who were [illegible] within [illegible]

While RCMP were violently attacking other people.

Ken White

PROTECTED

COMPLAINT

File No. 2000-PCC-980021

SUBJECT: Mr. Scott Truswell

On January 13, 1998, Mr. Truswell, in the attached letter, complained to the Commission that:

> At the University of British Columbia during the APEC conference on November 25, 1997, unidentified Members of the RCMP were responsible for: unnecessary violence; civil rights violations. oppressive conduct; improper arrests; pepper spraying of a CBC cameraman and of peaceful protesters.
>
> **Mr. Truswell wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University of British Columbia RCMP Detachment for: unnecessary violence; civil rights violations; oppressive conduct; improper arrests.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Public Complaints Commission:

I am writing this letter regarding unnecessary RCMP violence and civil rights violations at the UBC APEC protest on November 25/1997. I am VERY disturbed and angry over the actions of the RCMP and the orders of the Prime Minister. My sources of information on this event include CBC's program "The National", information from persons involved in the protest, and assorted information on the internet.

I believe that the Prime Minister has contravened the constitution! Karen Pearlston - UBC law student, was told by RCMP that The Prime Minister ordered RCMP to ensure that there would be no signs and no people along the stretch of roadway where the APEC leaders were to travel. Despite denials of this by the RCMP and Prime Ministers office, law student Craig Jones was arrested outside the security perimeter when he refused to take down two signs. In Canada do we not have the right to peaceful protest ?

I believe that the fact that APEC leaders had expressed concern about being exposed to protesters in Canada explains the Prime Ministers actions.

I would like to know why the Tibetan flag was removed from a UBC building, why Jaggi Singh was abducted by plain-clothes RCMP, who did not produce any id, and why female protesters were arrested and strip searched.

I would like to know why protesters were hit with pepper spray when there was obviously no threat from them, and why a CBC cameraman was sprayed - I cant imagine the cameraman being a threat to security.

This is the MOST embarrassing and shameful thing that I have ever seen the Canadian government do.

Scott Truswell

01-026
JAN 13 1998

PROTECTED

COMPLAINT

File No. 2000-PCC-980055

SUBJECT: Ms. Annette Muttray

On January 20, 1998, Ms. Muttray, in her attached letter, complained to the Commission that:

> At about 1020 hours on November 25, 1997 she was on Chancellor Drive in the University of British Columbia campus standing about 5 meters from a fence and 5 meters away from any RCMP or Vancouver Police Officers and away from any crowd. She was grabbed from behind by two unidentified Members of the University RCMP Detachment and told she was arrested.
>
> Ms. Muttray summarizes her complaints about the arrest and subsequent events as follows: unlawful arrest by Staff Sergeant Plante; having her picture taken by unidentified persons while in custody; failure to account for her property; unlawful detention; unjustified strip search of females; refusal to provide access to a lawyer; failure to provide service in locating property which is missing as a result of her arrest.
>
> **Ms. Muttray wishes to lodge complaints concerning the conduct in the performance of duties against Staff Sergeant Plante of the University of British Columbia RCMP Detachment for unlawful arrest, failure to account for property; unlawful detention and against unidentified Members of the Richmond, B.C. RCMP Detachment for unjustified strip search of females; refusal to provide access to a lawyer and against Constable Douglas for failure to provide service in locating property which is missing as a result of arrest.**

This complaint was received by Bernie Agg, a Commission Investigator for British Columbia and the Yukon.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

January 17, 1998

RCMP Public Complaints Commission
670-840 Howe Street
Vancouver, B.C.
Fax 666-7362

Annette Muttray, Msc.

Attn. Mr Agg / Investigator
and Ms. Donna Horton / Investigator

1) This is a formal complaint under the RCMP Act against Staff Sergeant Plante from the UBC Detachment of the RCMP, or any other personnel who gave him the order, for unlawful arrest; a complaint against the Richmond Pre-trial Center for unlawful detention, differential treatment of women, and delayed opportunity to speak to councel; and a complaint against the arresting RCMP and Vancouver Police officers and the staff of the RCMP Detachment at UBC for irresponsible handling of the arrestee's personal belongings.

2) On November, 25th 1997, at about 10:00am, I went by bicycle from the Student Union Building at UBC South to Chancellor Drive at the site of the security fence. My intention was to ask the RCMP why they had arrested James Doucette and to make sure he was allright. I was carrying a red day pack and a walkie talkie. I was part of a group of people responsible for communications and peacekeeping. Communication in this regard meant keeping people at other protest sites up to date on the number of the arrests made by the police and on how the protesters and the police were responding. The symbolic arrest of massmurderer Suharto was the first action that took place that day and the response of the policeforce to this action was of crucial importance to the protesters. The protests were entirely of peaceful intend, the organizers did not want anybody to get injured or hurt, and the police response would have impact on the way the protests would proceed that day. I am elaborating on this issue because I feel it is crucial for the understanding of my complaint.

I leaned my bike against the fence about 20m away from the road police officers were blocking. I went up to the police line and ask about James' arrest. I did not get any information on why he got arrested and on where he was. I was referred to a public relations officer who never showed up at the site. I talked to a few people who had witnessed the arrest and reported back using the walkie talkie. By that time the demonstration was over, people were dispersing after being asked to return to the Student Union Building. There were about 50 people left, including media, people getting interviewed, and bystanders. At the time of my arrest I was standing on the grass divider on the road, about 5m away from the fence and 5m away from the nearest RCMP or Vancouver Police officer. I was not surrounded by a crowd of people. At about 10:20am two

RCMP officers grabbed me frm behind, twisted my arms behind my back and said I was arrested. They pulled me behind the police line, took of my backpack and handcuffed me. One of the arresting officers took down my name and birthdate and read me my rights. Staff Sergeant LoydPlante from the RCMP came up to me and said that he was the arresting officer and that he had arrested me for obstruction and breaching the peace. I heavily complained about the accusation of obstruction RCMP or Vancouver Police, because I certainly did not do so. My complaints were ignored. Pictures were taken by non-media unidentified personnel. I was then led to a police van and driven off, together with James Doucette to the RCMP Detachment at UBC. Upon arrival, handcuffs were taken off and I had to remove shoes and all cloths but one layer. I was then transferred to a police van ("paddie wagon") and all 14 arrestees in the van were told that we had been arrested for breaching the peace, that we would be transferred to Richmond, and that we would be held there until 6pm. I asked about my backpack and was told that it would be sent to Richmond.

We were driven along a detour route (16th to Granville then South to Richmond, instead of South West Marine Drive to Richmond), and in Richmond the driver passed the courthouse three times going in circles. What the purpose of that delay was is unclear to me, but it was absolutely unnecessary to add to the discomfort.

At the Pre-trial Center in Richmond I was strip-searched. Apparently, all women got strip searched, but no men, two women even got body cavity searched. I see this as an unnecessary act of intimidation towards women who were peaceful protesters and not criminals.
The conditions at the pre-trial center were shocking. At some point we were 13 women in a cell not bigger than 2,5m x 2,5m. Our repeated calls for a lawyer were ignored or were commented with: "We are too busy, I'm only working here part time. You watch too much TV." As I can understand to a certain point that only two or three officers plus two guards were overwhelmed by 37 arrestees, I can not understand why the pre-trial center in Richmond was not better prepared for this situation (RCMP spokesperson, Constable Grant Learned, told *The Ubyssey*: "Police were aware that there would be protests, we expected it,...", The Ubyssey, Nov. 28th 1997, page 5) I cannot accept that the pre-trial center was unable to provide more personnel to make the detention as painless as possible. After six hours of unlawful detention I finally had the opportunity to call a lawyer. Some people never got this opportunity which is guaratied by law. We did not get food until late in the evening, although we were arrested in the morning and detained since noon. People were denied blankets. I repeatedly asked for my backpack which never arrived at the detention center. The two guards were unfriendly and ignorant of questions and the whole situation was psychologically-degrading and unjust. At some point the officer in charge told us that we would be kept not until 6pm when the leaders summit was over, but until 7pm. A short while after we were told 9pm, then "shortly after 9pm", then "we will play it by ear". At about 9pm I was released. The last arrestees in the Richmond Pre-trial Center were finally released at 11:30pm, five and a half hours after the promised time of release. Police outside the pre-trial center further intimidated us by telling us to move off the premises or no more people would get released. I submit, if they had released everybody at once at 6pm as promised, we would have been long gone. The officer in charge at the reception also denied us transportation back to Vancouver, forcing us to call in more people with cars to pick us up.

Soon after I was released I called in the RCMP Detachment at UBC to see whether the RCMP had secured my bike. As they had failed to do so I claimed it missing. I described it and told the officer (Officer Douglas) I would call back with the registration number of my bike. I was surprised to hear that I couldn't do so before Friday morning, because Officer Douglas claimed she was the only person working on these kind of files and she would be away until Friday morning. I then asked for the file number and again was told to wait until Friday morning. I questioned this process and was told that the RCMP had more important things to do then searching for bikes, because APEC was on! The officer was well aware that my bike got missing BECAUSE the RCMP had wrongfully arrested me during APEC.

3) These are the actions I am specifically complaining about:

1. Unlawful arrest by Staff Sergeant Plante from the RCMP
2. Having my picture taken by unidentified personnel
3. RCMP did not take care of my belongings, which includes back pack and bike, at the site of the arrest
4. RCMP did not tell me that the walkie talkie was confiscated
5. Unlawful detention at the Pre-trial Center in Richmond
6. Strip-searching peaceful female protesters, including me
7. Denied access to a lawyer until 6pm
8. Unlawful detention after the promised time of release (from 6pm until 9pm or in some cases until 11:30pm)
9. Irresponsible reply by the RCMP detachment at UBC when I declared my bike missing (Officer Douglas)

4) The response to my complaint should include:

1. a written explanation of the actions taken by the RCMP, especially:
    - why was I arrested, although I was not involved in civil disobedience at the demonstration, or obstructing police operations
    - who took my picture immediately after the arrest and what will it be used for
    - why were I and all other arrestees detained long after the APEC summit was over
    - why are people in Canada denied the right of free speech and the right to associate and protest under the Charter of Rights and Freedoms

2. a personal verbal as well as written apology from Staff Sergeant Plante and from the staff of the Richmond Pre-trial Center

3. suspension of Staff Sergeant Plante from the UBC Detachment of the RCMP

4. training of all police officers in charge on the 25th November,
    - mandate of the police is to protect citizens and to enforce the law, but not to take political sides
    - in the purpose and peacful intentions of civil disobidience actions
    - in crowed control, in detail: Arrests of peacekeepers and protest organizers will invariably make a crowd more aggressive and more difficult to control. Peacekeepers should be considered helpers to the police, not enemies.

Sincerely,

c/o: B.C. Civil Liberties Association; Cameron Ward, lawyer

PROTECTED

COMPLAINT

File No. 2000-PCC-980105

SUBJECT: Mr. Michael Wheatley

On January 27, 1998, Mr. Wheatley complained to the Commission that:

> Some Members of the University of British Columbia RCMP Detachment chose to ignore Canadian Law and suppressed demonstrators during the APEC conference. Mr. Wheatley bases his complaints on information he obtained from media and other sources. He believes that the demonstrators, who were law abiding citizens, were acting on his behalf.
>
> Mr. Wheatley asks: did the RCMP know beforehand that they would be illegally arresting people; if they did, is there any reason to believe that they will not behave similarly in the future. Mr. Wheatley believes that any Member, who knew beforehand that there would be illegal arrests, should have no authority to order the use of force or have the authority to actually use force in the future.
>
> **Mr. Wheatley wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University RCMP Detachment for oppressive conduct.**

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

COMPLAINT

File No. 2000-PCC-980108

SUBJECT: Ms. Andrea Westergard-Thorpe

On January 28, 1998, Ms. Westergard-Thorpe, in the attached fax and her telephone conversation, complained to the Commission that:

> During the APEC conference at the University of British Columbia on November 25, 1997, protesters were subjected to punitive actions by Members of the RCMP. She says that protesters who were trapped between members of the media pushing forward and police pushing back, were pepper sprayed and that people who were helpless on the ground were pepper sprayed. After a dialogue between police and protesters regarding the peaceful arrest of passive protesters, the first group of passive protesters were pepper sprayed and one girl was punched three times. Ms. Westergard-Thorpe was one of the people arrested. She says the plastic handcuffs were put on so tightly that her skin was cut and bleeding. She was kept in custody for 12 hours but was not charged. She complains about the crowding at the Detachment where they were held and about the strip search of women only in a room that was exposed to the view of male RCMP Members. She believes the only reason for the strip search was intimidation. They were subjected to foul language and were kept in custody longer than necessary.
>
> **Ms. Westergard-Thorpe wishes to lodge complaints concerning the conduct in the performance of duties against unidentified Members of the University Detachment and the Richmond, B.C. RCMP Detachment for : excessive use of force; unnecessary use of force; assault; improper arrest; unnecessary detention intimidation; refusal to allow access to a lawyer; refusal to allow the use of the telephone; improper care of prisoners; swearing.**

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

APEC Protest at UBC - Tuesday, November 25, 1997 A. Alissa Westergard-Thorpe

I was at the noon rally on the UBC campus in front of the Koerner Library and part of the group of people who volunteered for civil disobedience. The rally was extremely well organized and entirely peaceful with concern for communication among such a large group. Those willing to be arrested were separated and a line of people linked arms in a chain (a fair distance away from the police) to indicate where the rally should remain and to warn people that proceeding farther might result in their arrest. The first protesters that reached the security zone (in front of the flagpole) were allowed by the police to pull down the fence before the police moved in, assaulted them physically and with pepper spray, and made some arrests. Then, without verbal warning, the police began to push their line forward while pepper-spraying and hitting people with the police bicycles. Also, I witnessed several instances of the police using pepper spray in a purely punitive manner by spraying people who were already on the ground and/or not resisting the police. I was pepper-sprayed as the police indiscriminately doused large sections of the crowd

We reorganized and our peace-keeper volunteers tried to form a line to keep back the over-enthusiastic members of the media who had boxed-in protesters earlier and prevented people from fleeing the police attack. Water and assistance were given to those most in need. The protesters forward of the human chain (dividing the rally) sat down en masse several times to reduce some of the tension at the front lines and allow the organisers to work and speak with the police. Although we tried to arrange for peaceful arrests, many arrestees were still pepper-sprayed and assaulted by the police in full view of the protesters and the media.

I was arrested while peacefully trying to move through the police line and closer leaders' meeting where my protest could be seen and heard (as we were promised in the initial agreement between UBC administration and government security forces). This was approximately 12:45 pm on Tuesday, November 25, at the fence south of the flagpole. I was roughly pushed through the police line and cuffed tightly with a plastic tie. The plastic tie cut into me, bruising and breaking the skin around my wrists. An officer took me behind the security line to the paddywagon where my possessions were checked and bagged, my name and address were taken down, I was read my rights, and I was photographed and videotaped. At that time, I was told that I was under arrest for breaching the peace and obstruction of justice.

In addition to the predictable disdainful treatment that we received in jail, we were manipulated and deceived by the jail staff and the strip-searches were conducted in a discriminatory manner. At the time of my arrest, I was told that we would be released after processing, probably in a few hours. Covered in pepper-spray (although not nearly as much as some others), I spent more than 11 hours in custody. The police continually changed the predicted length of our detention, from 3 pm to 6 pm and then to 9 pm. Eventually they admitted that we wouldn't be charged but would be held until the leaders' meeting was over and we could no longer protest. While we were singing (and had not received a complaint nor a warning) a guard burst into our room and hollered that they were going to release us but our singing had earned us another five hours in jail. In fact, I was not released until nearly midnight, long after any opportunity to protest.

All the women processed at the Richmond Pretrial Detention Centre with me were strip-searched but none of the men, arrested at the same time and processed at the same facility, were strip-searched. We were led to believe that the strip search was standard procedure and I was shocked to learn later that the men were not similarly treated. Also, male police officers routinely walked by and watched through the open door of the room in which women were standing undressed before the jail matrons.

While waiting to be processed, we were told that a lawyer had been contacted and was on the way and later that a representative of APEC Alert! was in the facility and would speak with us; neither story was true. Prior to processing we were discouraged from requesting our phone call for legal counsel because the police said that it would delay our use of the bathroom (to clean ourselves of pepper spray) and that it was not necessary because the fictitious lawyer was already coming. In jail, we were repeatedly told that we would be allowed a personal call (to notify our friends or family that we were being detained) after the legal calls were over (another tactic to discourage contacting legal counsel) but the police later reneged.

Finally, I should note that we were held for a very long time in cold and overcrowded conditions. I was in Cell 6, which was made for two people yet held seven women. There was a bunk bed but the top bunk was broken so there was only one bunk on which to sit. Most of us were cold (we were allowed only one layer of clothing) as we sat on the concrete floor. This was especially true for those who still had the shakes from the pepper spray, yet the matrons would not even give us a single blanket for the whole cell. The people who were arrested in the morning action (of the East Timor Alert Network) were in custody for more than eight hours before they received any food (I estimate that the food was brought to us around 6:30 pm but that is a guess since my watch was removed) The food that was available, pork and beans with bread, was inappropriate for most people since many of us are vegetarians, so we ate only bread until our release.

COMPLAINT

File No. 2000-PCC-980109

SUBJECT: Mr. Dennis Porter

On January 27, 1998, Mr. Porter complained to the Commission that:

> On November 23, 1997 his press pass was taken from him by Constable Buis although Mr. Porter had been told by the RCMP that he was not a security risk. He was told that an appeal would not be heard until after the APEC conference. Mr. Porter says he has an audio record of the conversations concerning his press pass.
>
> Mr. Porter further complains that on the night of November 23 he was standing with his video camera in the vicinity of the Museum of Anthropology at the University of British Columbia. He was approached by RCMP Member Sergeant Stewart who said that he would take away Mr. Porter's press pass if he saw Mr. Porter there again.
>
> In the evening on November 24, 1997 at a flagpole on the University of British Columbia campus Mr. Porter has a video record of the arrest of Mr. Malmo-Levine. Mr. Malmo-Levine was held by two unidentified RCMP Members while Sergeant Stewart sprayed Mr. Malmo-Levine in the face with pepper spray. A second person was sprayed and kicked by Sergeant Stewart.
>
> After Mr. Malmo-Levine was arrested Sergeant Stewart approached Mr. Porter's camera person who was helping, and asked her for her press pass. When Mr. Porter tried to explain that he was the journalist he was told by Sergeant Stewart to be quiet or he would be arrested for obstruction. Mr. Porter has a video of this incident.
>
> At another location on the University campus on November 24, 1997 he heard a scream and someone say he had been bitten by a police dog.
>
> On November 25, 1997, on the University of British Columbia campus, a fence, erected during the APEC conference came down on Mr. Porter while he was filming.

He heard people screaming and then he felt pepper spray on his face. He did not know where it came from. He says there was excessive pepper spraying at the time.

Later, on November 25, 1997 Mr. Porter was at a barricade on the University campus. When he tried to cross the barricade to take video pictures of the protesters he was told by unidentified Members of the RCMP to go back. About half an hour later when a media person with a video camera crossed the barricade for the same reason, nothing was said. When Mr. Porter joined the media person Mr. Porter was told he would be arrested if he did that again. There was no explanation why one person could film and the other could not.

Mr. Porter wishes to lodge a complaint concerning the conduct in the performance of duties against: Constable Buis of the University RCMP Detachment for unnecessary use of power; against Sergeant Stewart of the University RCMP Detachment for unnecessary use of power, intimidation, excessive use of force, assault; against unidentified Members of the University RCMP Detachment for excessive pepper spraying and for intimidation.

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

COMPLAINT

File No. 2000-PCC-980163

SUBJECT: Martha C. Piper, Ph.D.

In her attached letter of January 30, 1998, Martha Piper complained to the Commission that:

Regarding the RCMP action at the APEC meeting held at UBC on November 25, 1997, the RCMP may have violated the constitutional rights, to peaceful demonstration and protest, of some members of the UBC community,.

The complainant wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University, RCMP Detachment for oppressive conduct.

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

THE UNIVERSITY OF BRITISH COLUMBIA

6328 Memorial Road
Vancouver, B.C Canada V6T 1Z2

Telephone (604) 822-2121
Fax (604) 822-5055

Martha C. Piper, PhD
President and Vice-Chancellor

FILE DOSSIER 1325-1-4
TO A S Heafey
INDEX
FILE CHA: DOSSIER

January 30, 1998

Ms. Shirley Heafey, Chair
RCMP Public Complaints Commission
P.O. Box 3423
Station D
Ottawa, Ontario
K1P 6L4

Dear Ms. Heafey,

Re: Complaints concerning RCMP action at APEC Economic Leaders' Meeting held at UBC on November 25, 1997

I understand that you are investigating complaints with regard to the above.

I have received a number of reports alleging inappropriate behaviour by individual officers within the RCMP. I wish to advise that the nature of the allegations raises a number of concerns for the University, especially since many UBC students were affected by such conduct. In particular, I request that you review the allegation that, with respect to some members of the UBC community, the RCMP violated their constitutional rights to peaceful demonstration and protest.

I urge you to ensure that all complaints relating to the above are fully and fairly investigated and look forward to receiving a copy of the report compiled at the conclusion of your inquiries.

Yours sincerely

Martha Piper

Martha C. Piper
President

MP:lkm

012570

REÇU PAR LA PRÉS
FEB 11 1998
RECEIVED BY THE

COMPLAINT

File No. 2000-PCC-980384

SUBJECT: Mr. Craig Jones

In the enclosed correspondence dated February 18, 1998, and March 13, 1998, and Statement of Claim dated December 8, 1997, Mr. Joseph J. Arvay, on behalf of his client Mr. Craig Jones, complained to the Commission that:

> At about 0030 hours on November 25, 1997, outside Mr. Jones' residence on the University of British Columbia campus, the signs he had erected were removed by Unidentified Members of the University Detachment on the orders of RCMP Superintendent Thomsett.
>
> At about 0750 hours on November 25, 1997 outside his residence on the University of British Columbia campus, signs he had made were removed by unidentified Members of the University RCMP Detachment on the orders of RCMP Inspector Dingwall.
>
> At the time his signs were removed at 0750 hours on November 25, 1997 he was thrown to the pavement, striking a fence as he fell. He says he was roughly handled by Unidentified Members of the University Detachment under the supervision of RCMP Inspector Dingwall.

Cont'd...

He was detained at the University Detachment where he was examined for injuries by ambulance personnel and then moved to a cell at the Richmond, B.C. RCMP Detachment. There he was held with seven other people in a cell 7X10 feet in floor area with no bunks, toilet, blankets or running water. Mr. Jones was not told the reason for his arrest. He was held in custody until 2300 hours on November 26, 1997 and released without being charged.

Mr. Jones further complains that he has been intimidated by threats from the RCMP that he will be sued for defamation of the RCMP. He believes these threats are an attempt to have him withdraw his complaints about the conduct of the RCMP.

The complainant wishes to lodge a complaint concerning the conduct in the performance of duties against unidentified Members of the University Detachment and Superintendent Thomsett for unnecessary use of powers;

against unidentified Members of the University Detachment and Inspector Dingwall for unnecessary use of powers;

against unidentified Members of the University Detachment and Inspector Dingwall for unnecessary arrest and excessive use of force;

against unidentified Members of the Richmond Detachment for unnecessary detention and improper handling of prisoners;

against Superintendent May, Superintendent Thomsett, Inspector Dingwall of RCMP "E" Division for intimidation.

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

ARVAY FINLAY
BARRISTERS

Reply to: Joseph J. Arvay
Our file: 1173

March 13, 1998 **Via fax**

Chris Considine
Public Complaints Commission
Suite 102, 7337-137 Street
Surrey, BC V3W 1A4

Dear Mr. Considine:

Re: APEC

It has come to my attention that Mr. Jones has not formally lodged a complaint with the Commission aside from the one that was referred to in my letter of February 18, 1998. Please treat this letter as a formal complaint, the substance of which is referenced in the Statement of Claim filed by Mr. Jones against the Queen, the RCMP and Officers Dingwall, May and Thompsett.

Sincerely,

ARVAY FINLAY

per:

Joseph J. Arvay

JJA*scs

cc: Client
George Macintosh
Ivan Whitehall

1173\Letters\Considine Public Complaints Commission March 12-98

Joseph J. Arvay, Q.C.* John L. Finlay* T. Murray Rankin* Irene C. Faulkner Mark G. Underhill Christopher Jones

4th Floor - 888 Fort St Victoria, BC V8W 1H8
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*Denotes a law corporation

ARVAY FINLAY
BARRISTERS

Reply to: Joseph J. Arvay
Our file: 1173

February 18, 1998 **Via fax**

Public Complaints Commission
Suite 102, 7337-137 Street
Surrey, BC V3W 1A4

Dear Sir:

Re: Craig Jones v. The RCMP et al

I act on behalf of Mr. Craig Jones who has filed an action in the British Columbia Supreme Court against the RCMP, the Federal Crown, as well as individual officers of the RCMP. I enclose for your information a copy of that Claim. As you will see it relates to the conduct of the RCMP and the Federal Government in relation to the APEC conference in Vancouver late last year. A Statement of Defence was filed on behalf of RCMP officers May, Thompsett and Dingwall on February 13, 1998. In that Statement of Defence (which I also enclose for your convenience) the RCMP officers accused Mr. Jones of "repeatedly" defaming the RCMP. They say that Mr. Jones "portrayed the RCMP as focusing on protecting the sensibilities rather than the physical security of the visiting leaders, thus portraying the RCMP as not caring about the civil rights of Canadians and caring instead not to offend the visiting leaders". While these RCMP officers stopped short of actually suing Mr. Jones for that so-called defamation, the veiled threat to sue remains. In my respectful opinion this is a blatant exercise of using "libel chill" to further suppress the exercise of my client's rights to freedom of expression. Given the nature of this case the irony could not b11Wüüüü½ be more stark.

Even more reprehensible is the fact that these RCMP officers are now seeking "special costs" against Mr. Jones. This is because Mr. Jones has alleged that the RCMP officers acted with malice. A claim for special costs will only be ordered where conduct of a litigant is reprehensible. This can hardly be said with respect to Mr. Jones. As far as I am aware, it is unprecedented in a case brought by a citizen against the government alleging a *Charter* violation that special costs have ever been sought, let alone ordered. I can only assume that its purpose, together with the allegation of defamation, is to intimidate Mr. Jones into dropping the case or withdrawing the allegations that he has made. While I have confidence the judiciary will find in favour of Mr. Jones, the fact of the matter is that the RCMP has engaged in what can only be described as heavy-handed tactics and which warrant this complaint. Mr. Jones is a single student embrolled in a suit against the most powerful institutions in our country and he should not have to put up with these kinds of retaliatory tactics. Mr. Jones is also concerned that other persons and particularly impecunious students will be forced into silence by the threats of libel suits and legal costs. The allegations which Mr. Jones has made in the past have also been made by members of the media, professors of law, at least one member of Parliament and many members of the public at large. Some of these individuals may consider themselves now less free to properly criticize the RCMP in the future and that indeed is a very serious problem.

I understand that consideration is presently being given to conducting a public inquiry into the conduct of the RCMP with respect to the APEC matter. I would ask that this letter be treated as either a separate complaint or a complaint to be considered by your office should a public inquiry be conducted.

Sincerely,

ARVAY FINLAY

per:

Joseph J. Arvay

JJA*scs
Enclosures

cc: Client
Chris Considine
George Macintosh
Ivan Whitehall

1173\Letters\Public Complaints Commission Feb 18-98

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CRAIG ELTON JONES

PLAINTIFF

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
THE ATTORNEY GENERAL OF CANADA.
THE ROYAL CANADIAN MOUNTED POLICE,
POLICE SUPERINTENDENT WAYNE MAY,
POLICE SUPERINTENDENT TREVOR THOMPSETT,
and POLICE INSPECTOR WILLIAM DINGWALL**

DEFENDANTS

STATEMENT OF CLAIM

1. The Plaintiff Craig Elton Jones ("Jones"), of Green College, 213 - 6201 Cecil Green Park Road, Vancouver, BC, V6T 1Z1, is a third year University of British Columbia ("UBC") law student, a former member of the Canadian Armed Forces primary reserve, an executive member of the Board of the B.C. Civil Liberties Association ("BCCLA") and a volunteer with Amnesty International.

2. The Defendant the Royal Canadian Mounted Police ("R.C.M.P".), of RCMP "E" Division Headquarters, 657 West 37th Avenue, Vancouver, BC V5Z 1K6, is an agent of the Crown and named pursuant to the *Royal Canadian Mounted Police Act, R.S.C,. 1985, c. R-9,*.

3. The Defendant R.C.M.P. Superintendent Wayne May ("May") of 5255 Heather Street, Vancouver, B.C., V5Z 3L7 was at all material times the overall director of the R.C.M.P. security during the Asia Pacific Economic Cooperative ("APEC") forum held in Vancouver,

B.C. between November 18 and November 26, 1997.

4. The Defendant Police Superintendent Thompsett ("Thompsett"), of #1, 45924 Airport Road, Chilliwack, B.C., V2P 1A2, was at all material times in command of R.C.M.P security forces on the UBC campus during the APEC forum in Vancouver, BC.

5. The Defendant Police Inspector Dingwall ("Dingwall"), of 5255 Heather Street, Vancouver, B.C., V5Z 3L7 at all material times supervised R.C.M.P. security forces based at the UBC campus as a result of the APEC forum.

6. The Defendants Her Majesty the Queen in right of Canada and the Attorney General of Canada are named pursuant to the *Crown Liability and Proceedings Act R.S., 1985, c. C-50, s. 1990, c.8, s.21* and are directly and vicariously liable for the conduct of the R.C.M.P., its officers and members, and for the conduct of other Crown servants, agents, employees and officials including those employed by the Office of the Prime Minister ("the "PMO") which was the sponsor, host and organizer of the APEC forum.

7. In that regard an agreement in the nature of a licence was entered into between the federal Crown and UBC to allow the federal government (including officials of the PMO) to designate and control areas on campus where protest and assembly would be prohibited or permitted. The areas that were designated as permissible areas of protest were so far from the route along which the APEC motorcade was to pass, that the PMO's office had effectively determined that the APEC motorcade would not be exposed to any signs of protest. Express or implicit instructions to this effect were given to the RCMP even to the extent of the PMO expressly overruling an agreement reached between UBC and the RCMP which would have allowed for protest that would have been visible to the APEC motorcade and at the same time not compromise the security of the APEC participants.

8. On or about November 20, 1997, Jones received authorization from the policy director of the BCCLA to act as a BCCLA observer during protests organized in conjunction with the APEC forum at the UBC campus. Jones also acted as a volunteer observer for the Law Students' Legal Advice Program during the protests.

9. Between November 20 and November 25, 1997 and prior to his arrest and detention (which are described below), Jones had on numerous occasions observed the APEC protests, and became known to the RCMP and others as a representative of the BCCLA having grave concerns about the legality and propriety of the RCMP tactics in quelling legitimate and peaceful protest. This included concerns respecting the abusive treatment of protesters, the use of pepper spray to disperse protesters and to discourage protest, the requirement that the protesters sign a wholly unwarranted undertaking as a condition of their release and the highly and the unnecessarily restrictive and prohibitive measures in place to ensure the security of the APEC participants.

10. On or about Saturday, November 22, 1997 the R.C.M.P. established a 'Secure Zone' on the UBC campus in preparation for APEC proceedings.

11. On or about Monday November 24, 1997, at approximately 8:00 a.m. Jones placed three signs on the security fence lining the APEC motorcade route outside of his residence. Each sign was made of letters printed on 8.5 x 11 inch sheets of paper. The signs read respectively: "FREE SPEECH", "DEMOCRACY", and "HUMAN RIGHTS". The signs were attached with tape in a manner that did not present any security or line-of-sight concerns for the police. Each page of the signs was printed with a notice warning that the signs had been properly and lawfully erected by a Canadian citizen exercising his right of free expression under the *Canadian Charter of Rights and Freedoms* and that removal of the signs would violate the laws of Canada.

12. On Monday, November 24, at approximately 7:00 p.m., 1997 the Secure Zone was expanded to include the Museum of Anthropology, the Chan Centre for Performing Arts, the

President's Residence, and the surrounding areas, buildings and roads. Jones' residence, Green College, is on the UBC campus and is adjacent to the APEC motorcade route leading to the Museum of Anthropology where APEC leaders were due to meet later that morning.

13. At approximately midnight on Monday, November 24, 1997, Jones observed that one of the signs he had posted had been partially removed. A R.C.M.P. security checkpoint had been established nearby. Jones was informed by an attending R.C.M.P. officer that the rest of the signs would be removed. When Jones attempted to lodge a complaint with the R.C.M.P., Thompsett informed Jones that he had given the order for the removal of the signs. When Jones protested that he had a constitutional right to display the signs Thompsett said "Don't be stupid; go to bed" and that Jones could "take him to court" or like words.

14. The signs were removed by the RCMP at approximately 12:30 a.m. Tuesday, November 25, 1997 and were returned to Jones, in spite of Jones' assertion that the removal of the signs violated his constitutionally protected rights. Jones then retrieved the pages on which the letters of the sign were printed and laid out the letters of the "HUMAN RIGHTS" sign on the edge of the sidewalk facing the road. This sign remained in place until it was picked up and removed from the sidewalk by a RCMP officer during Jones' arrest which is described below.

15. At approximately 7:50 a.m. on November 25, 1997, Jones returned to the fenced area and positioned the signs, which were now attached to two portable coat racks, on the sidewalk adjoining his residence. The signs read; "FREE SPEECH" and "DEMOCRACY" His intention was to position the signs on the sidewalk adjoining his residence and then make his way through the security checkpoint to attend law school classes. Jones was informed that the security checkpoint was closed and that he could not proceed until the motorcade of APEC officials had passed.

16. While Jones waited to be allowed to proceed, R.C.M.P. officers informed Jones that the signs obstructed the sidewalk and must be moved. Jones peacefully complied with this request and

moved himself and the signs onto the lawn of his residence.

17. Dingwall informed Jones that the signs must be removed from the lawn within ten minutes. Jones politely asserted his right to display the signs. Dingwall insisted that the signs must be removed. Dingwall did not suggest that Jones must remove himself from the lawn area. The lawn area was an area in which Jones was entitled to be in, a fact acknowledged by the RCMP officers.

18. When Jones refused to release the sign he was holding, Dingwall warned Jones that he had 30 seconds to release the sign or he would be arrested for "obstruction". Jones politely declined to release the sign. Dingwall ordered several officers to take Jones' signs. (Jones is not aware of the names of those officers despite a request to the RCMP that it provide those names.)

19. Jones was moved from the lawn area and thrown bodily to the pavement, striking a fence as he fell. Jones released the sign as he landed face down on the cement. Jones cooperated with the officers and did not resist in any way. R.C.M.P. officers held Jones in a rough manner and the signs were removed and subsequently destroyed. Dingwall supervised and directed the RCMP officers in their arrest and detention of Jones. At no time was it ever suggested to Jones that the means by which his sign was mounted posed any security risk; indeed at or about the same time the RCMP had removed cloth and cardboard signs from other students who were simply holding or hanging them.

20. Jones was taken immediately to the R.C.M.P. detachment on the UBC campus and detained. Jones' personal effects were confiscated and he was placed in a holding cell. Jones made a request for medical examination of injuries arising from his detention and was examined by ambulance personnel.

21. Jones was transferred to the Richmond Detention Centre where he was placed, with approximately seven others, in a 7 x 10 foot cell with no bunks, toilets, blankets, or running

water. Those incarcerated were treated with general disrespect by the guards. Jones was denied information as to the reason for his arrest and was denied the names of the attending officers. The attending R.C.M.P. officers indicated that Jones and other protesters were being held so that they could not rejoin the protests.

22. Jones was released at approximately 11:00 p.m. on November 26, 1997. No charges were ever laid against Jones.

23. The conduct of all of the Defendants, and each of them, constitute a wanton, flagrant, intentional, or alternatively, reckless disregard for Jones' constitutional and legally protected rights including:

(a) Jones' constitutional right to peacefully and publicly express his thoughts, views, opinions and beliefs as guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*

(b) Jones' constitutional right to engage in peaceful assembly as guaranteed by s. 2 (c) of the *Canadian Charter of Rights and Freedoms*;

(c) Jones' constitutional right to liberty and security of the person as guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*;

(d) Jones' constitutional right not to be arbitrarily detained or imprisoned as guaranteed by s.9 of the *Canadian Charter of Rights and Freedoms*;

(e) Jones' common law rights to be protected from assault, battery, false and wrongful arrest and false and wrongful imprisonment.

24. Further the RCMP's, May's, Thompsett's and Dingwall's blatant and callous disregard for the Plaintiff's constitutionally protected rights and freedoms was malicious, vindictive and

designed to punish Jones. It was also designed to and had the effect of preventing him and deterring others from exercising their constitutionally protected rights and freedoms to engage in a peaceful protest of the APEC proceedings; as such the conduct of the RCMP and these Defendants is deserving of punitive damages.

25. At all material times Her Majesty the Queen in Right of Canada through and by Her agents, servants, officers and employees, including officials in the PMO, directed, authorized and/or acquiesced in the unconstitutional conduct of the R.C.M.P. The unprecedented abuse of such governmental power to quell legitimate, peaceful and constitutionally protected expression is reprehensible and deserving of punitive damages.

26. On or about December 4, 1997 the RCMP published a memorandum entitled "THE MOST FREQUENTLY ASKED QUESTIONS ABOUT APEC SECURITY MEASURES" which was widely reported in the national and local media and which purported to provide the RCMP's account of the incidents described herein. That document by express words and by innuendo describe the Plaintiff as unreasonable, obstructing justice, posing a threat to the safety of the members of the APEC motorcade and dishonest. This is grossly untrue, unfair and unjustified and the RCMP has seriously defamed the Plaintiff and further damaged his reputation. This deliberately untrue reconstruction of the events, clearly intended to deflect proper and lawful criticism from the RCMP and to cast blame and odium on the Plaintiff warrants further punitive damages and the award of special costs.

27. As a result of the conduct of all of the Defendants and each of them, the Plaintiff suffered damages arising from:

(a) the infringement of his constitutional right to freely, publicly and peacefully express his views, opinions and beliefs as guaranteed by s. 2(b) of the *Canadian Charter of Rights and Freedoms*;

(b) the infringement of his constitutional rights to peaceful assembly as guaranteed by s. 2 (c) of the *Canadian Charter of Rights and Freedoms*;

(c) the infringement of his constitutional right to liberty and security of the person as guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*;

(d) the infringement of his constitutional right not to be arbitrarily detained or imprisoned as guaranteed by section 9 of the *Canadian Charter of Rights and Freedoms*;

(e) physical injury;

(f) humiliation, mental anguish and loss of dignity;

(g) interruption of his normal business and academic activities and loss of income.

(h) damage to his reputation and consequently to his future employment prospects and professional life ;

28. The Defendants, and each of them, are jointly and severally liable for the damages suffered by the Plaintiff.

THE PLAINTIFF THEREFORE CLAIMS:

(a) General damages;
(b) Special damages;
(c) Aggravated and Punitive damages;
(d) Interest;
(e) Costs, including Special Costs;

(f) Such further and other relief as to this Honourable Court may seem just.

PLACE OF TRIAL: Vancouver, British Columbia.

Dated this 8th day of December, 1997.

JOSEPH J. ARVAY
Solicitor for the Plaintiff

PROTECTED

COMPLAINT

File No. 2000-PCC-980318

SUBJECT: Mr. Jaggi Singh

On March 13, 1998, Mr. Singh complained to the Commission that:

> On November 24, 1997 between 1200 and 1300 hours he was walking between Brock Hall and the student Union Building at the University of British Columbia. He was approached by three men in plain clothes who spoke his name, threw him to the ground, handcuffed him and one of them held a hand over Mr. Singh's mouth. None of the three men identified themselves, Mr. Singh was not told he was under arrest. He was thrown into an unmarked vehicle, on the floor with his hands cuffed behind his back. One of the men was heard to say, "Let's get the fuck out of here – go, go."
>
> Before arriving at the University Detachment the car was stopped and Mr. Singh was allowed to sit up. One of the men got in the back with Mr. Singh and he was shown badges. The men identified themselves as Members of the RCMP. Mr. Singh was shown a warrant for his arrest in regard to an incident which had occurred on November 7, 1997. He was then read his rights.
>
> In regard to the warrant, Mr. Singh says that on November 21, 1997 he was at the APEC coordinating office where he saw a poster with his picture on it. He took the picture down. He has no criminal record and the poster said nothing about him being wanted. He believes it was intimidating to have the poster in that location.

Cont'd...

While he was at the APEC office he was approached by an unidentified RCMP Member and a Member of the Vancouver Police Department. One of them made a telephone call to check for warrants and at that time, on November 21, 1997 between 1500 and 1600 hours there was no record of a warrant for Mr. Singh.

Mr. Singh was strip searched while at the University Detachment. He was denied access to counsel. He was later taken to the Richmond, B.C. RCMP Detachment where he contacted counsel. He was later released, with conditions, after appearing before a judge.

The complainant wishes to lodge a complaint concerning the conduct in the performance of duties against three unidentified Members of the University RCMP Detachment for the manner in which his arrest was contrived, assault, unnecessary use of force.

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

PROTECTED

COMPLAINT

File No. 2000-PCC-980639

SUBJECT: Mr. Jonathan Oppenheim

On April 23, 1998, Mr. Oppenheim, in his conversation and in the attached fax, complained to the Commission that:

> On the afternoon of November 25, 1997 near Chancellor Boulevard on the University of British Columbia campus he was arrested by two unidentified Members of the University RCMP Detachment. During the arrest his jacket was deliberately ripped by one of the Members. During the arrest, a megaphone Mr. Oppenheim was carrying was smashed.
>
> Mr. Oppenheim also complains that on November 25, 1998 at the University of British Columbia campus organizers of a peaceful protest by students were hampered in their efforts to control the crowds because unidentified Members of the University RCMP Detachment arrested students with walkie talkies who were reporting events to organizers, arrested students with megaphones who were addressing the protesters and arrested organizers of the peaceful protest. These arrests created tension in the crowds rather than reduced tension.
>
> Mr. Oppenheim also complains that police deliberately planned to use pepper spray although no one was resisting arrest. In addition to the pepper spray itself, police did nothing to move away crowding media personnel who were blocking access, by first aid personnel, to victims of pepper spray.

cont'd Page 2

Mr. Oppenheim further complains that with the exception of one or two RCMP Members, no identification name tags or identifying numbers were visible on the Members and many Members refused to give their names when asked.

Mr. Oppenheim further complains that all the women who were arrested were subjected to a strip search and some to body cavity searches. He believes these searches were done to intimidate the prisoners rather than for any security reasons.

Mr. Oppenheim further complains that during student protests at the University of British Columbia on November 25, 1997, Brenna Bhandar was assaulted and a megaphone ripped from her hand by Constable Bracewell of the University RCMP Detachment.

The complainant wishes to lodge complaints concerning the conduct in the performance of duties against unidentified Members of the University RCMP Detachment for excessive use of force during the search of Mr. Oppenheim and for damage to Mr. Oppenheim's belongings; against unidentified Members of the University RCMP Detachment for unnecessary arrests of students with walkie talkies and megaphones and of organizers of peaceful student protesters; against unidentified Members of the University RCMP Detachment for unnecessary use of pepper spray against people who were not resisting arrest; against unidentified Members of the University RCMP Detachment who failed to identify themselves; against unidentified Members of the RCMP who intimidated women prisoners by conducting unnecessary strip searches and body cavity searches; and against Constable Bracewell of the University RCMP Detachment for excessive use of force and assault.

This complaint was received by Bernie Agg, a Commission Investigator for the Western Region.

The information contained in this complaint was provided to and received by the Commission pursuant to paragraph 45.35(1)(a) of the RCMP Act. This complaint is forwarded to the RCMP as the notification required to be given to the Commissioner pursuant to subsection 45.35(3) of the Act.

Dear Sir or Madam,

I was one of the organizers of the APEC protest at UBC. Although I did not originally lodge a complaint, I have been called as a witness before the Commission for the Public Hearing over APEC. I met with lawyer Kevin Gillette who suggested that I should lodge a complaint. I was also interviewed by Donna Horton. They both thought that my complaint could still be considered, since I had already been interviewed. There was concern that when I appear before the commission, there will not be a level playing field. Right now, I have no standing before the commission, and while the RCMP can cross-examine me, and review my testimony, I do not have the same rights. I therefore request that I be considered as a complainant.

Since the transcript of my testimony was often indecipherable, I have written a lengthy complaint. I have tried to include only information which I witnessed, but I have also included some information which may have been unreported, or which I think should be emphasized. If you need any details including names or phone numbers of witnesses, please feel free to contact me. Also, please excuse the speech in the first section...the information which you may find more relevant begins on page 4 with a list of some security concerns. Page 5 outlines some of our tactics during the APEC protest; page 6 contains a list of complaints; page 8 contains information on my arrest. I have mostly concentrated on events which occurred on November 25th, but there were incidents of ridiculous police activity on many other occasions. In particular, November 24th was quite a day, but since I was not a witness to many of these events, I have not included them in my complaint.

Sincerely,

Jonathan Oppenheim

Many people have expressed shock at the actions of the RCMP and the federal government during the APEC Leaders' Summit. They are upset that our freedom of speech was stifled - that our proud democracy was tarnished as students were pepper sprayed and arrested merely for engaging in peaceful political protest. This is a load of dung. The Mounties should be commended for their actions. Their suppression of dissent was conducted with an honesty and integrity which is completely lacking in professional politicians. Yet despite the brave conduct of the RCMP, there are ungrateful individuals who are criticizing our beloved Mounties. These individuals believe that had it not been for the actions of the RCMP, students would have been able to exercise their freedom of expression. They show concern that students were not seen by APEC leaders. "If only the students were allowed to protest 100 meters closer to the motorcade route," they say.

I do not wish to lodge a complaint against the RCMP for their suppression of expression. If anything, their belief that banners and chants were a threat is charming, and should fill us with optimism. Our complaints should be aimed in other directions: against those who believe we could have expressed our opposition to APEC if we were crammed inside designated "protest pens" like ferrets, and left to wave placards as the motorcades whizzed by; against those who believed that they could showcase our democracy by creating a fenced in petting zoo of hippies and anarchists; against those who natter on incessantly about freedom of speech.

Freedom of speech is not the issue. It is far more important that we have the freedom to be heard. How effective is our free speech when compared to the means at the disposal of APEC officials? All levels of government spent millions promoting APEC. Our tax dollars were used to hang APEC banners throughout the city, and a reflecting pond was created especially for the leaders' photo op. The APEC logo was stamped onto our phone books, and we received APEC promotional material in the same envelope as our GST checks. During the APEC conference the mainstream media were cloistered in the media center and fattened on a steady diet of APEC press packs. The entire event was stage managed to the minute, all to promote an agenda that most Canadians didn't even know existed.

In the face of overwhelming manipulation and propaganda, the right to hold signs and speak freely is merely table scraps. No matter how vigorously we may have waved our placards, we would still have been drowned out by articles in the mainstream press discussing what Clinton ate for lunch. When the media was critical of APEC, they were only critical of the traffic problems that the Summit was causing. And when the Mounties brutalized protesters, APEC simply shifted from being a traffic story, to a story about pepper-spray. Of course, APEC itself never became much of a story; it's still business as usual at the APEC secretariat in Singapore where decisions which effect every aspect of our lives are routinely made behind closed doors, with no input from civil society. The only official advisory board within APEC is made up of CEO's and representatives of big business. Through APEC and other trade bureaucracies like the World Trade Organization (WTO) and the Organization for Economic Cooperation and

Development (OECD), the business community is molding our future. Away from society's prying eyes, these bureaucracies make decisions with almost no public debate. Through deals like the Multilateral Agreement on Investment, dubbed "an investors bill of rights ," the power of transnational corporations and these undemocratic institutions is slowly being entrenched. In the words of Renato Rugiero, Director General of the WTO, "We are writing the constitution of a single global economy."

If transnational corporations and these institutions need not listen to public opinion, why bother even protecting freedom of speech? If the protest pens had been ten meters from the APEC Summit site, instead of almost half a kilometer away, would we pat ourselves on the back and proclaim that we live in a democracy? What good is freedom of speech, if we don't have the freedom to be heard? In today's society, genuine free speech doesn't come from a megaphone, but from the wallet. Those who have money to spend on lobbyists, or public relations departments, or advertisements, have free speech. The business elite who can afford to make large political contributions, or own media outlets, are heard. McDonald's, Conrad Black, and Coca-Cola have freedom of speech; the rest of us are relegated to yelling monotonous chants at passing motorcades.

So let's not take our anger out on the poor Mounties. They didn't trample on our rights -- we barely had them to begin with. And while we smugly assert that we are better off here than in countries like Indonesia, our procedural democracy is nonetheless shallow; democracy is more than the right to vote every four years. The Mounties were doing us a favor when they arrested and pepper sprayed us. As in the Rodney King beating, the explicit images shown on TV are markers of an underlying problem. It's not the overt, obvious suppression that we should worry about, but the constant, grinding silencing of dissent that occurs everyday. If we look through the haze of pepper spray, we will see that what counts is not the narrow, legal definition of freedom of speech, but freedom itself -- whatever the hell that means.

* * *

Sorry, that was a bit of an essay....While I do not wish to complain about the Mounties' role in suppressing our freedom of expression, I am nonetheless appalled by the stupidity of their actions. They claim that they acted as they did in order to provide security for the APEC leaders, and yet, security was atrocious. Police seemed so preoccupied with protesters that they left their beloved leaders vulnerable to genuine security threats.

The police claim that they acted effectively and responsible, and yet their actions endangered the lives of thousands of students as well as themselves. At times they seemed to be trying to incite a riot.

I do not think the police actions were in any way out of character -- they are simply so used to abusing their authority that they were unable to change their behavior for the television cameras. We had personally been witnessing brutal police behavior well before APEC, especially in the Downtown Eastside. In the weeks leading up to APEC, police activity increased dramatically in the area in an attempt to "clean up" the neighborhood for visiting delegates. A moment didn't go by when there wasn't a police cruiser in sight. One night while returning home from an APEC Alert meeting, we witnessed three cop cars and a paddywagon being used to arrest a couple for jaywalking.

After APEC, police action against activists continued. Members of our group have been harassed while postering. One woman was hit by a police car while postering on a side walk. Our pamphlets have been confiscated, and some of our members have been arrested simply for showing up to demonstrations.

* * *

With regards to the atrocious lack of security, a few points are worth mentioning:

- The security fence was held up by plastic twist ties which could be snapped off with your finger. In the days leading up to the summit, members of APEC Alert would joke with police about the twist ties. Later, a metal wire was added to the base of the fence, perhaps as a result of our taunting.

- On the morning of the 25th at Green College, police were so preoccupied with removing signs from the area, that they ignored potential security threats such as backpacks left at the side of the road.

- After the action at the flag pole, we broke up into three groups in order to block off all three exits. A small group of 50-100 students marched to Gate Six beating drums and chanting (hippies). When they got to the entrance, they surprised two police officers, who in a panic, radioed for help. Given the huge amount of surveillance, it seems almost funny that no one knew this group was coming. It took five minutes for a contingent of officers to arrive at the gate. Had the students wanted to, they could have continued their march right into the security area, completely unchallenged. Instead, they behaved like polite Canadians, and simply sat in the road and waited.

- After the Leaders' meeting, police pepper sprayed these students off the road so that the leaders could make their escape. They claim that they needed to use pepper spray, in order to clear the road moments before the leaders left (presumably so that terrorists wouldn't be tipped off as to which exit the motorcade would use). However, once the roadway was cleared, they dithered away their time performing ludicrous tasks such as parking a bus near the protesters in order to ensure that the leaders would not see any hippies. It was more than fifteen minutes later that the motorcades finally slunk out Gate Six. That's more than enough time for terrorists to set up a rocket launcher.

* * *

As for student safety, it should be stressed that the organizers planned carefully to ensure that no one would get hurt.

- In pamphlets, at talks, and on press releases, we would routinely stress that we were a peaceful, non-violent group.
- We had open meetings to which everyone was invited (including the University administration and the RCMP). All our plans were public knowledge; we did not try to engage in any sneaky surprise tactics. There seemed no sense in trying to pull the wool over the eyes of our clever Mounties.
- We conducted non-violence and civil disobedience workshops in the weeks leading up to APEC. In the final week before APEC, we had a non-violence training session everyday at the tent city.
- The civil disobedience action was to be at the flag pole, a location which was highly visible, and open. This area is actually very far from the meeting site. Had any students decided to run into the security area, they would not have been a security threat (especially given the number of police lurking about).
- We had approximately fifty peacekeepers with red arm bands to facilitate the civil disobedience action and make sure that it was calm and peaceful.
- We had a communication table set up, along with a group of observers with walkie talkies, who would be able to inform the organizers if anything went wrong.
- We had a group of megaphoners who would be able to communicate with the crowd.
- During the rally, the importance of remaining calm, and being non-violent was repeatedly stressed by myself and other speakers. Although the civil disobedience action involved stepping over the security line, students were warned not to rush into the security area. Once they were over the line the police would arrest them immediately.
- All students who took part in the action were asked to go to a booth were they would receive information on the action. They were given our "code of peaceful civil disobedience."
- Using the megaphone, our plans for the action were once again relayed to the police.

In contrast to the student organizers of the demonstration, the RCMP seemed intent on creating a dangerous atmosphere.

- In the morning, both of the observers with walkie-talkies (Annette Muttray and Jamie Doucette) were arrested while they were watching the East Timor Alert Network (ETAN) action (the observers were standing well back of the police line, and were all individuals who did not wish to risk arrest). The ETAN action was almost identical in nature to ours, and the observers were there to get a sense of whether this action was viable. During the ETAN action, police arrested students as they crossed the security line. During our rally, police changed tactics, using bikes and a different formation. Because of the arrest of the observers, we did not realize that police tactics had changed until our demonstration arrived near the security fence. At this point, many people thought that police had set up some sort of a trap. The police were lined up along the route of the march so that students couldn't go anywhere except to the security fence. There were no officers positioned in front of the security fence as there had been during the ETAN rally. While the police acted as if they were surprised when the fence was taken down, they clearly planned for it to happen. Given that students took the fence down slowly, and held it (it would have been very difficult to actually climb over the fallen fence), it would have been much safer to simply arrest the students peacefully instead of pepper spraying them into a panic. Even if some students had tried to get over the fence, they were still very far from the meeting site, and there were plenty of police around who could have made arrests.

- One woman, Brenna Bhandar, was addressing the blockade on Chancellor Blvd through a megaphone when she was assaulted by an officer who then ripped the megaphone from her hands. He later identified himself as officer Bracewell. Everyone else with a megaphone was arrested (not all of the megaphones have been returned). In addition, we were not allowed to plug in a speaker near Koerner Library, which would have allowed for more effective communication between organizers and the crowd. The loss of all the megaphones could have seriously impeded the organizer's ability to control the crowd. When combined with the arrest of all our observers, this police tactic could have resulted in an uncontrollable riot.

- The police arrested people who they perceived as being key organizers. A journalist, S., saw police flipping threw a book which had pictures of many of the organizers in it, along with brief descriptions. The arrest of organizers only served to enrage students, and heighten tension. Essentially, being outspoken or devoting time to activism was considered a crime.

- The use of pepper spray was planned from the very beginning. Five minutes before students arrived at the flagpole, Jane Kerico was told by RCMP to remove her dog from the area because pepper spray was going to be used and her dog might get hurt. Aside from the fact that police showed more consideration for dogs than students, the use of pepper spray created panic and increased student anger. One student's lung collapsed as a result of the spray, and at least one student, A., suffered burn marks on her face. The amount of spray was so great, that when students arrived at the police station, police had to open all the windows (the police were coughing and had difficulty breathing because of the pepper spray emanating from the bodies of the students). Many people had swollen eyes and red skin for days after the Summit.

- Police used pepper spray instead of arresting students. I was involved in discussions with the police during the civil disobedience action. The officer who appeared in charge (he was the only one wearing a name tag) refused to arrest students who walked up in small groups peacefully. He said that it was too much trouble (no one wants more paper work). Eventually, they did allow one group to be peacefully arrested, but for the most part, it appears that they preferred the use of force. It should be emphasized that students approached the fence (or police line) in small groups while the rest of the crowd sat down. At no time were officers in danger. We concentrated the action along a highly visible, small section of the security area, so as not to pose a physical threat. The use of pepper spray to clear the blockade at Gate Six was particularly nasty, as many of those students were in the process of moving out of the way. Of course, the police's biggest mistake was to spray the CBC camera man. Staff Sergeant Stewart was not very nice.

- The media surrounded students who had fallen due to pepper spray in order to film them. Our peacekeepers and first aid support were unable to reach the victims, and police made no attempt to move the media away. Our peacekeepers had to make a human fence to keep the media from swarming in on protesters. The Global TV camera guy was the biggest jerk, and trampled students in order to get good shots.

- With the exception of one or two officers, no RCMP wore name tags, or identifying numbers (the magic of Velco). In addition, many officers refused to give their names or badge numbers to students.

- All the women were strip-searched (some had cavity searches), while none of the men were. I am not advocating that men should also have been strip searched... Strip searches of woman activists were also used as an intimidation tactic at the University of Guelph during the occupations there. These police tactics inspired some street theater by a group known as WOPIG (Woman Opposed to Political Intimidation Group). Their skit was called "What's Up Your Ass."

* * *

The following section applies to my arrest in particular. Please excuse me while I become self-absorbed...

I had already been arrested during the Halloween Corporate Tour for writing with washable chalk on the windows of the Atrium (where the Leader's were to have lunch). My granny says that I was arrested because I was a naughty boy who wrote all over the principal's house. During this arrest, I was exposed for the first time to police over-reaction. Despite being charged for a harmless action, we were handcuffed, and brought to the station where we were left in the back of the locked police cruiser. We were left there for twenty minutes with the garage door closed, and the lights out. I then spent five days in jail while we appealed the conditions of release, which we felt restricted our right to protest. Jail was not very fun, but I got lots of homework done.

On the 25th I was arrested on Chancellor Blvd., while leading a group of people to the second blockade. Two officers grabbed me and started pulling me away from the crowd. People in the crowd reached to pull me back, but the police pepper sprayed the people around me. They then told me that they had a warrant for my arrest. Eventually, they told me that they didn't have a warrant, but that I was being charged with causing a disturbance and mischief, for incidents at the blockade. Later they charged me with mischief, saying that I had kicked the security fence. During my arrest, the megaphone was smashed to the ground (it cost about $300 dollars). While being searched, one of the officers deliberately ripped my jacket (it's actually my father's and is of sentimental value, although it is quite ugly according to my mother). This officer was not wearing a name tag, and refused to identify himself. None of the other officers (including the arresting officer, and the driver of the paddy wagon) would identify him, however, there is a picture of him on the front page of the Vancouver Sun, so you can figure out who he is. He was not very nice.

I was then put into a paddywagon. We where able to drum on the floor of the wagon with our feet, making a loud racket. The crowd responded and we had fun, even though the paddywagon smelled like police dog. After the leaders had escaped, I was taken to the RCMP detachment. Everyone else was moved to other divisions, but they kept me there by myself. Staff Sergeant Plante came into my cell, and said "So Jonathan, was it all worth it?" He said that I was single-handedly responsible for pulling down the security fence. It was my fault that students got pepper sprayed. They were not going to charge anyone that day except for me, which is kinda funny, since I was not physically involved with the civil disobedience action at the security fence. I was only helping to facilitate it, and was trying to ensure that it went ahead safely. They didn't charge any of the people who had pulled down the security fence; why were they charging me? He said that they would not release me until after the No to APEC rally, because they were concerned that I would attend. They then fed me two sandwiches from Bennies' Bagels, which were pretty good. I was so tired, I was actually able to sleep on the nasty mattress. I was released at approximately 11pm. The Crown later decided that there were no grounds to bring the charges forward, and they were stayed.

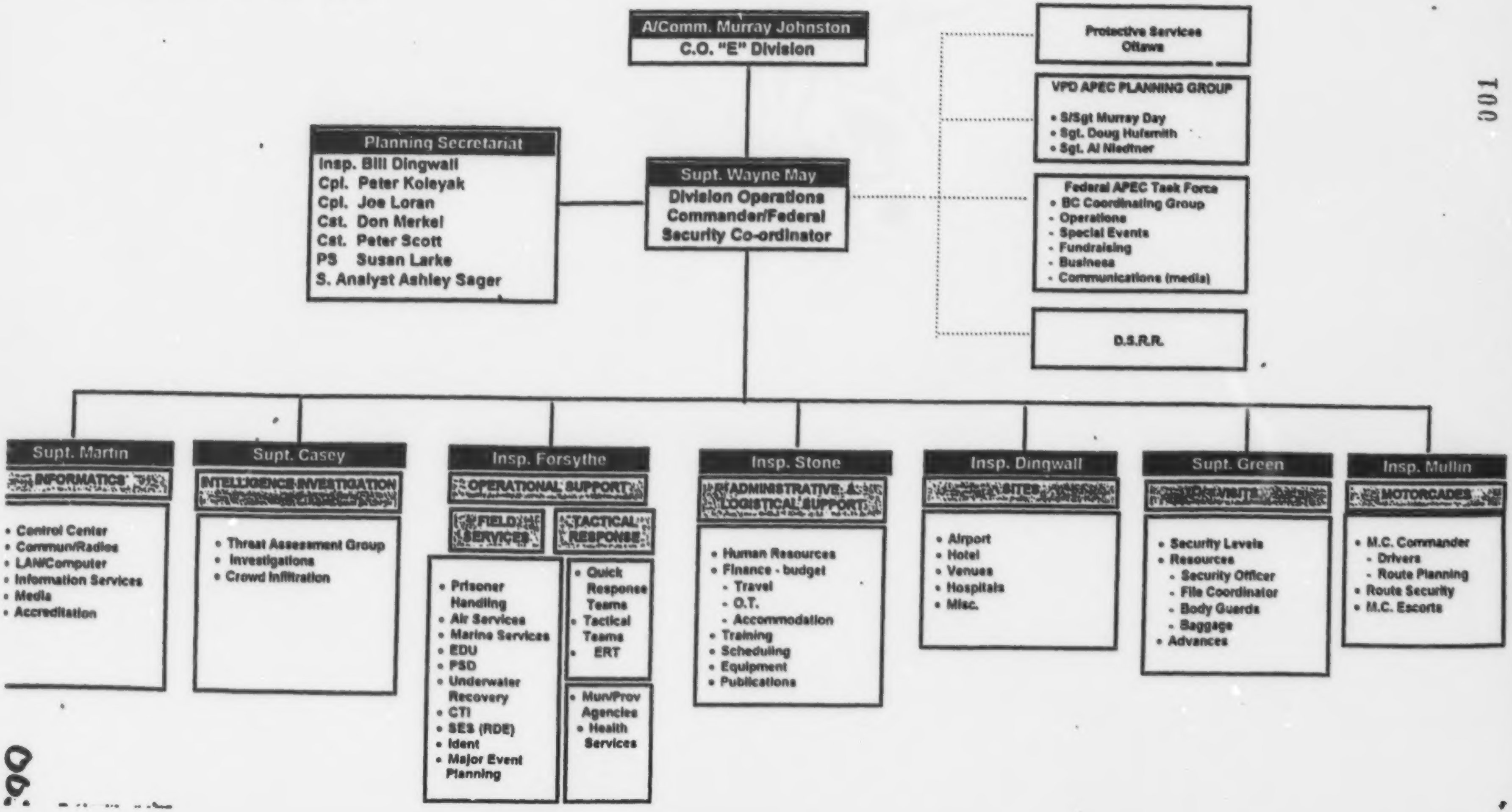
APPENDIX IV

RCMP Planning Structure for APEC

Z-001

001

ASIA PACIFIC ECONOMIC COOPERATION - (APEC)
NOVEMBER 1997 VANCOUVER, B.C.



A/Comm. Murray Johnston
C.O. "E" Division

Supt. Wayne May
Division Operations
Commander/Federal
Security Co-ordinator

Planning Secretariat
Insp. Bill Dingwall
Cpl. Peter Koleyak
Cpl. Joe Loran
Cst. Don Merkel
Cst. Peter Scott
PS Susan Larke
S. Analyst Ashley Sager

Protective Services
Ottawa

VPD APEC PLANNING GROUP
- S/Sgt Murray Day
- Sgt. Doug Hufsmith
- Sgt. Al Niedtner

Federal APEC Task Force
- BC Coordinating Group
  - Operations
  - Special Events
  - Fundraising
  - Business
  - Communications (media)

D.S.R.R.

Supt. Martin
INFORMATICS
- Control Center
- Commun/Radios
- LAN/Computer
- Information Services
- Media
- Accreditation

Supt. Casey
INTELLIGENCE-INVESTIGATION
- Threat Assessment Group
- Investigations
- Crowd Infiltration

Insp. Forsythe
OPERATIONAL SUPPORT

FIELD SERVICES
- Prisoner Handling
- Air Services
- Marine Services
- EDU
- PSD
- Underwater Recovery
- CTI
- SES (RDE)
- Ident
- Major Event Planning

TACTICAL RESPONSE
- Quick Response Teams
- Tactical Teams
- ERT

- Mun/Prov Agencies
- Health Services

Insp. Stone
ADMINISTRATIVE & LOGISTICAL SUPPORT
- Human Resources
- Finance - budget
  - Travel
  - O.T.
  - Accommodation
- Training
- Scheduling
- Equipment
- Publications

Insp. Dingwall
SITES
- Airport
- Hotel
- Venues
- Hospitals
- Misc.

Supt. Green
[illegible] VISITS
- Security Levels
- Resources
  - Security Officer
  - File Coordinator
  - Body Guards
  - Baggage
- Advances

Insp. Mullin
MOTORCADES
- M.C. Commander
  - Drivers
  - Route Planning
- Route Security
- M.C. Escorts

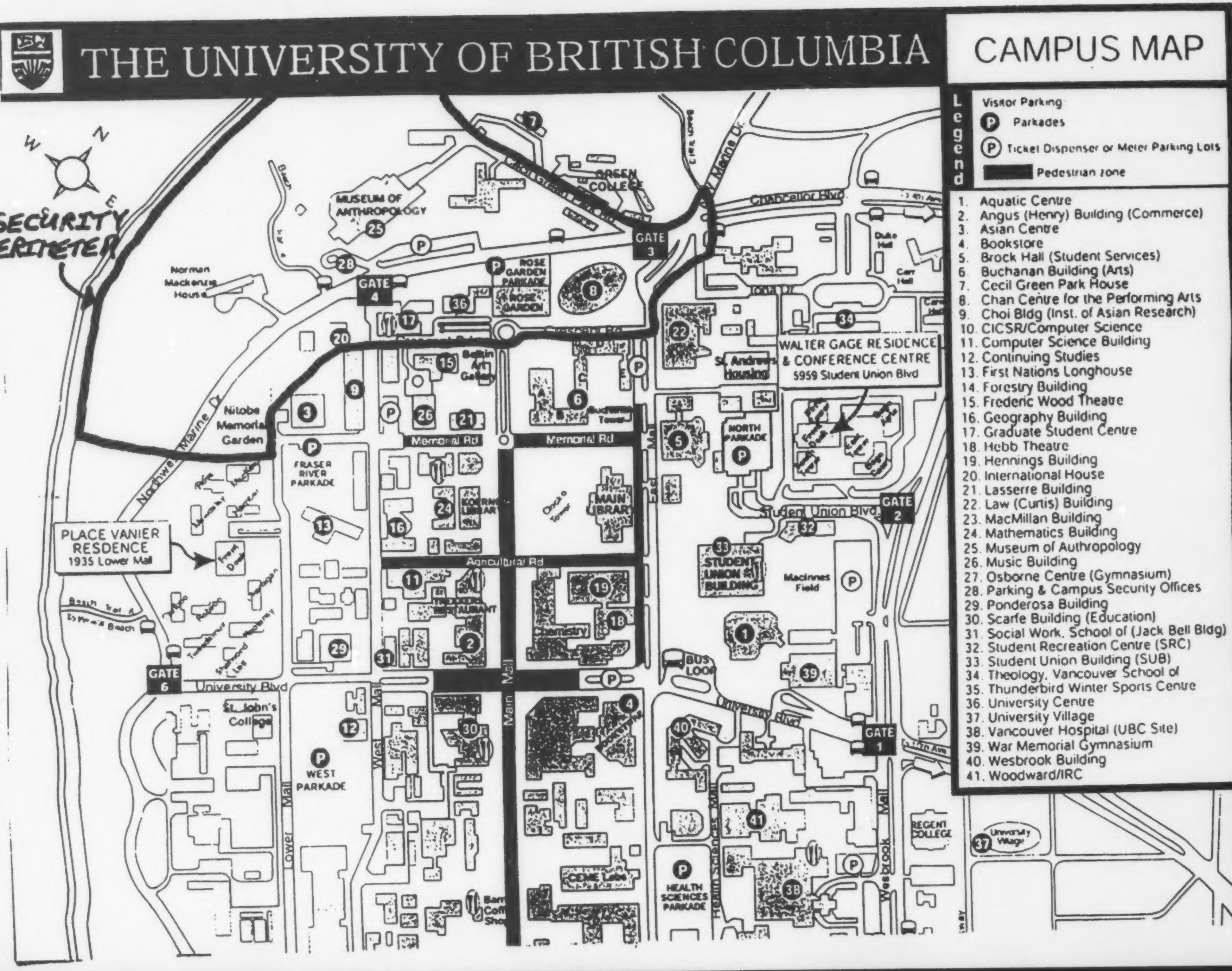
00:

APPENDIX V

Map of UBC Campus showing security perimeter

THE UNIVERSITY OF BRITISH COLUMBIA

CAMPUS MAP


N
E
W
SECURITY PERIMETER
MUSEUM OF ANTHROPOLOGY
Norman Mackenzie House
GATE 4
GATE 3
GATE 2
GATE 1
GATE 6
GREEN COLLEGE
ROSE GARDEN PARKADE
ROSE GARDEN
Chancellor Blvd
NW Marine Dr
Nitobe Memorial Garden
Northwest Marine Dr
FRASER RIVER PARKADE
Belkin Art Gallery
Memorial Rd
Agricultural Rd
MAIN LIBRARY
KOERNER LIBRARY
Buchanan Tower
Chemistry
St. Andrews Housing
WALTER GAGE RESIDENCE & CONFERENCE CENTRE
5959 Student Union Blvd
NORTH PARKADE
Student Union Blvd
STUDENT UNION BUILDING
MacInnes Field
BUS LOOP
University Blvd
PLACE VANIER RESDENCE
1935 Lower Mall
Front Desk
St. John's College
WEST PARKADE
Lower Mall
West Mall
Main Mall
Health Sciences Mall
HEALTH SCIENCES PARKADE
CEME Labs
Wesbrook Mall
REGENT COLLEGE
University Village
Duke Hall
Carr Hall
Beach Trail 3
Beach Trail 6
Wreck Beach

Legend

- Ⓟ Visitor Parking
- **P** Parkades
- Ⓟ Ticket Dispenser or Meter Parking Lots
- ■ Pedestrian zone

1. Aquatic Centre
2. Angus (Henry) Building (Commerce)
3. Asian Centre
4. Bookstore
5. Brock Hall (Student Services)
6. Buchanan Building (Arts)
7. Cecil Green Park House
8. Chan Centre for the Performing Arts
9. Choi Bldg (Inst. of Asian Research)
10. CICSR/Computer Science
11. Computer Science Building
12. Continuing Studies
13. First Nations Longhouse
14. Forestry Building
15. Frederic Wood Theatre
16. Geography Building
17. Graduate Student Centre
18. Hebb Theatre
19. Hennings Building
20. International House
21. Lasserre Building
22. Law (Curtis) Building
23. MacMillan Building
24. Mathematics Building
25. Museum of Authropology
26. Music Building
27. Osborne Centre (Gymnasium)
28. Parking & Campus Security Offices
29. Ponderosa Building
30. Scarfe Building (Education)
31. Social Work, School of (Jack Bell Bldg)
32. Student Recreation Centre (SRC)
33. Student Union Building (SUB)
34. Theology, Vancouver School of
35. Thunderbird Winter Sports Centre
36. University Centre
37. University Village
38. Vancouver Hospital (UBC Site)
39. War Memorial Gymnasium
40. Wesbrook Building
41. Woodward/IRC

APPENDIX VI

Sections 1 –12 of the *Canadian Charter of Rights and Freedoms*

APPENDIX VI

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

Democratic Rights

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

Continuation in special circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Annual sitting of legislative bodies

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Mobility Rights

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

APPENDIX VII

Relevant Sections of the *Criminal Code*

APPENDIX VII

RELEVANT SECTIONS OF THE CRIMINAL CODE

Protection of persons acting under authority

25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,

(b) as a peace officer or public officer,

(c) in aid of a peace officer or public officer, or

(d) by virtue of his office, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Preventing breach of peace

30. Every one who witnesses a breach of the peace is justified in interfering to prevent the continuance or renewal thereof and may detain any person who commits or is about to join in or to renew the breach of the peace, for the purpose of giving him into the custody of a peace officer, if he uses no more force than is reasonably necessary to prevent the continuance or renewal of the breach of the peace or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of the breach of the peace. R.S., c. C-34, s. 30.

Arrest for breach of peace

31. (1) Every peace officer who witnesses a breach of the peace and every one who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

Giving person in charge

(2) Every peace officer is justified in receiving into custody any person who is given into his charge as having been a party to a breach of the peace by one who has, or who on reasonable grounds the peace officer believes has, witnessed the breach of the peace. R.S., c. C-34, s. 31.

Defence of house or real property

41. (1) Every one who is in peaceable possession of a dwelling-house or real property, and every one lawfully assisting him or acting under his authority, is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove a trespasser therefrom, if he uses no more force than is necessary.

Assertion of right to house or real property

42. (1) Every one is justified in peaceably entering a dwelling-house or real property by day to take possession of it if he, or a person under whose authority he acts, is lawfully entitled to possession of it.

Offences relating to public or peace officer

129. Every one who

(a) resists or wilfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

(b) omits, without reasonable excuse, to assist a public officer or peace officer in the execution of his duty in arresting a person or in preserving the peace, after having reasonable notice that he is required to do so, or

(c) resists or wilfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure,

is guilty of

(d) an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(e) an offence punishable on summary conviction. R.S., c. C-34, s. 118; 1972, c. 13, s. 7.

Assault

265. (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

Assault

266. Every one who commits an assault is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction. R.S., c. C-34, s. 245; 1972, c. 13, s. 21; 1974-75-76, c. 93, s. 22; 1980-81-82-83, c. 125, s. 19.

Threat to commit offence against internationally protected person

424. Every one who threatens to commit an offence under section 235, 266, 279 or 279.1 against an internationally protected person or who threatens to commit an offence under section 431 is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years. R.S., 1985, c. C-46, s. 424; R.S., 1985, c. 27 (1st Supp.), s. 55.

Mischief

430. (1) Every one commits mischief who wilfully

(a) destroys or damages property;

(b) renders property dangerous, useless, inoperative or ineffective;

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or

(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

Attack on premises, residence or transport of internationally protected person

431. Every one who commits an attack on the official premises, private accommodation or means of transport of an internationally protected person that is likely to endanger the life or liberty of such person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. R.S., 1985, c. C-46, s. 431; R.S., 1985, c. 27 (1st Supp.), s. 58.

Arrest without warrant by peace officer

495. (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

(b) a person whom he finds committing a criminal offence; or

(c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitation

(2) A peace officer shall not arrest a person without warrant for

(a) an indictable offence mentioned in section 553,

(b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or

(c) an offence punishable on summary conviction, in any case where

(d) be believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to

  (i) establish the identity of the person,

  (ii) secure or preserve evidence of or relating to the offence, or

  (iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

(e) be has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

Consequences of arrest without warrant

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

(a) any proceedings under this or any other Act of Parliament; and

(b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2). R.S., 1985, c. C-46, s. 495; R.S., 1985, c. 27 (1st Supp.), s. 75.

Taking before justice

503. (1) A peace officer who arrests a person with or without warrant or to whom a person is delivered under subsection 494(3) or into whose custody a person is placed under subsection 163.5(3) of the Customs Act shall cause the person to be detained in custody and, in accordance with the following provisions, to be taken before a justice to be dealt with according to law:

(a) where a justice is available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice without unreasonable delay and in any event within that period, and

(b) where a justice is not available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice as soon as possible,

unless, at any time before the expiration of the time prescribed in paragraph (a) or (b) for taking the person before a justice,

(c) the peace officer or officer in charge releases the person under any other provision of this Part, or

(d) the peace officer or officer in charge is satisfied that the person should be released from custody, whether unconditionally under subsection (4) or otherwise conditionally or unconditionally, and so releases him.

Conditional release

(2) If a peace officer or an officer in charge is satisfied that a person described in subsection (1) should be released from custody conditionally, the officer may, unless the person is detained in custody for an offence mentioned in section 522, release that person on the person's giving a promise to appear or entering into a recognizance in accordance with paragraphs 498(1)(b) to (d) and subsection (2.1).

Undertaking

(2.1) In addition to the conditions referred to in subsection (2), the peace officer or officer in charge may, in order to release the person, require the person to enter into an undertaking in Form 11.1 in which the person undertakes to do one or more of the following things:

(a) to remain within a territorial jurisdiction specified in the undertaking;

(b) to notify the peace officer or another person mentioned in the undertaking of any change in his or her address, employment or occupation;

(c) to abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking, or from going to a place specified in the undertaking, except in accordance with the conditions specified in the undertaking;

(d) to deposit the person's passport with the peace officer or other person mentioned in the undertaking;

(e) to abstain from possessing a firearm and to surrender any firearm in the possession of the person and any authorization, licence or registration certificate or other document enabling that person to acquire or possess a firearm;

(f) to report at the times specified in the undertaking to a peace officer or other person designated in the undertaking;

(g) to abstain from

  (i) the consumption of alcohol or other intoxicating substances, or

  (ii) the consumption of drugs except in accordance with a medical prescription; or

(h) to comply with any other condition specified in the undertaking that the peace officer or officer in charge considers necessary to ensure the safety and security of any victim of or witness to the offence.

Application to justice

(2.2) A person who has entered into an undertaking under subsection (2.1) may, at any time before or at his or her appearance pursuant to a promise to appear or recognizance, apply to a justice for an order under subsection 515(1) to replace his or her undertaking, and section 515 applies, with such modifications as the circumstances require, to such a person.

Application by prosecutor – s. 503(2.3)

(2.3) Where a person has entered into an undertaking under subsection (2.1), the prosecutor may

(a) at any time before the appearance of the person pursuant to a promise to appear or recognizance, after three days notice has been given to that person, or

(b) at the appearance,

apply to a justice for an order under subsection 515(2) to replace the undertaking, and section 515 applies, with such modifications as the circumstances require, to such a person.

Remand in custody for return to jurisdiction where offence alleged to have been committed

(3) Where a person has been arrested without warrant for an indictable offence alleged to have been committed in Canada outside the territorial division where the arrest took place, the person shall, within the time prescribed in paragraph (1)(a) or (b), be taken before a justice within whose jurisdiction the person was arrested unless, where the offence was alleged to have been committed within the province in which the person was arrested, the person was taken before a justice within whose jurisdiction the offence was alleged to have been committed, and the justice within whose jurisdiction the person was arrested

(a) if the justice is not satisfied that there are reasonable grounds to believe that the person arrested is the person alleged to have committed the offence, shall release that person; or

(b) if the justice is satisfied that there are reasonable grounds to believe that the person arrested is the person alleged to have committed the offence, may

(i) remand the person to the custody of a peace officer to await execution of a warrant for his or her arrest in accordance with section 528, but if no warrant is so executed within a period of six days after the time he or she is remanded to such custody, the person in whose custody he or she then is shall release him or her, or

(ii) where the offence was alleged to have been committed within the province in which the person was arrested, order the person to be taken before a justice having jurisdiction with respect to the offence.

Interim release

(3.1) Notwithstanding paragraph (3)(b), a justice may, with the consent of the prosecutor, order that the person referred to in subsection (3), pending the execution of a warrant for the arrest of that person, be released

(a) unconditionally; or

(b) on any of the following terms to which the prosecutor consents, namely,

(i) giving an undertaking, including an undertaking to appear at a specified time before the court that has jurisdiction with respect to the indictable offence that the person is alleged to have committed, or

(ii) entering into a recognizance described in any of paragraphs 515(2)(a) to (e) with such conditions described in subsection 515(4) as the justice considers desirable and to which the prosecutor consents.

Release of person about to commit indictable offence

(4) A peace officer or an officer in charge having the custody of a person who has been arrested without warrant as a person about to commit an indictable offence shall release that person unconditionally as soon as practicable after he is satisfied that the continued detention of that person in custody is no longer necessary in order to prevent the commission by him of an indictable offence.

Consequences of non-release

(5) Notwithstanding subsection (4), a peace officer or an officer in charge having the custody of a person referred to in that subsection who does not release the person before the expiration of the time prescribed in paragraph (1)(a) or (b) for taking the person before the justice shall be deemed to be acting lawfully and in the execution of his duty for the purposes of

(a) any proceedings under this or any other Act of Parliament; or

(b) any other proceedings, unless in such proceedings it is alleged and established by the person making the allegation that the peace officer or officer in charge did not comply with the requirements of subsection (4). R.S., 1985, c. C-46, s. 503; R.S., 1985, c. 27 (1st Supp.), s. 77; 1994, c. 44, s. 42; 1997, c. 18, s. 55; 1998, c. 7, s. 3; 1999, c. 25, s. 7.

Certain actions not to preclude issue of warrant

512. (1) A justice may, where the justice has reasonable and probable grounds to believe that it is necessary in the public interest to issue a summons or a warrant for the arrest of the accused, issue a summons or warrant, notwithstanding that

(a) an appearance notice or a promise to appear or a recognizance entered into before an officer in charge or another peace officer has been confirmed or cancelled under subsection 508(1);

(b) a summons has previously been issued under subsection 507(4); or

(c) the accused has been released unconditionally or with the intention of compelling his appearance by way of summons.

Warrant in default of appearance

(2) Where

(a) service of a summons is proved and the accused fails to attend court in accordance with the summons,

(b) an appearance notice or a promise to appear or a recognizance entered into before an officer in charge or another peace officer has been confirmed under subsection 508(1) and the accused fails to attend court in accordance therewith in order to be dealt with according to law, or

(c) it appears that a summons cannot be served because the accused is evading service, a justice may issue a warrant for the arrest of the accused. R.S., 1985, c. C-46, s. 512; R.S., 1985, c. 27 (1st Supp.), s. 82; 1997, c. 18, s. 58.

Order of release

515. (1) Subject to this section, where an accused who is charged with an offence other than an offence listed in section 469 is taken before a justice, the justice shall, unless a plea of guilty by the accused is accepted, order, in respect of that offence, that the accused be released on his giving an undertaking without conditions, unless the prosecutor, having been given a reasonable opportunity to do so, shows cause, in respect of that offence, why the detention of the accused in custody is justified or why an order under any other provision of this section should be made and where the justice makes an order under any other provision of this section, the order shall refer only to the particular offence for which the accused was taken before the justice.

Release on undertaking with conditions, etc.

(2) Where the justice does not make an order under subsection (1), he shall, unless the prosecutor shows cause why the detention of the accused is justified, order that the accused be released

(a) on his giving an undertaking with such conditions as the justice directs;

(b) on his entering into a recognizance before the justice, without sureties, in such amount and with such conditions, if any, as the justice directs but without deposit of money or other valuable security;

(c) on his entering into a recognizance before the justice with sureties in such amount and with such conditions, if any, as the justice directs but without deposit of money or other valuable security;

(d) with the consent of the prosecutor, on his entering into a recognizance before the justice, without sureties, in such amount and with such conditions, if any, as the justice directs and on his depositing with the justice such sum of money or other valuable security as the justice directs; or

(e) if the accused is not ordinarily resident in the province in which the accused is in custody or does not ordinarily reside within two hundred kilometres of the place in which he is in custody, on his entering into a recognizance before the justice with or without sureties in such amount and with such conditions, if any, as the justice directs, and on his depositing with the justice such sum of money or other valuable security as the justice directs.

Power of justice to name sureties in order

(2.1) Where, pursuant to subsection (2) or any other provision of this Act, a justice, judge or court orders that an accused be released on his entering into a recognizance with sureties, the justice, judge or court may, in the order, name particular persons as sureties.

Alternative to physical presence

(2.2) Where, by this Act, the appearance of an accused is required for the purposes of judicial interim release, the appearance shall be by actual physical attendance of the accused but the justice may, subject to subsection (2.3), allow the accused to appear by means of any suitable telecommunication device, including telephone, that is satisfactory to the justice.

Where consent required

(2.3) The consent of the prosecutor and the accused is required for the purposes of an appearance if the evidence of a witness is to be taken at the appearance and the accused cannot appear by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous visual and oral communication.

Idem

(3) The justice shall not make an order under any of paragraphs (2)(b) to (e) unless the prosecution shows cause why an order under the immediately preceding paragraph should not be made.

Conditions authorized

(4) The justice may direct as conditions under subsection (2) that the accused shall do any one or more of the following things as specified in the order:

(a) report at times to be stated in the order to a peace officer or other person designated in the order;

(b) remain within a territorial jurisdiction specified in the order;

(c) notify the peace officer or other person designated under paragraph (a) of any change in his address or his employment or occupation;

(d) abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order, except in accordance with the conditions specified in the order that the justice considers necessary;

(e) where the accused is the holder of a passport, deposit his passport as specified in the order;

(e.1) comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of any victim of or witness to the offence; and

(f) comply with such other reasonable conditions specified in the order as the justice considers desirable.

Condition prohibiting possession of firearms, etc.

(4.1) When making an order under subsection (2), in the case of an accused who is charged with

(a) an offence in the commission of which violence against a person was used, threatened or attempted,

(b) an offence under section 264 (criminal harassment),

(c) an offence relating to the contravention of subsection 5(3) or (4), 6(3) or 7(2) of the Controlled Drugs and Substances Act, or

(d) an offence that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance,

the justice shall add to the order a condition prohibiting the accused from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things, until the accused is dealt with according to law unless the justice considers that such a condition is not required in the interests of the safety of the accused or the safety and security of a victim of the offence or of any other person.

Surrender, etc.

(4.11) Where the justice adds a condition described in subsection (4.1) to an order made under subsection (2), the justice shall specify in the order the manner and method by which

(a) the things referred to in subsection (4.1) that are in the possession of the accused shall be surrendered, disposed of, detained, stored or dealt with; and

(b) the authorizations, licences and registration certificates held by the person shall be surrendered.

Reasons

(4.12) Where the justice does not add a condition described in subsection (4.1) to an order made under subsection (2), the justice shall include in the record a statement of the reasons for not adding the condition.

Additional conditions

(4.2) Before making an order under subsection (2), in the case of an accused who is charged with an offence described in section 264, or an offence in the commission of which violence against a person was used, threatened or attempted, the justice shall consider whether it is desirable, in the interests of the safety and security of any person, particularly a victim of or witness to the offence, to include as a condition of the order

(a) that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order; or

(b) that the accused comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of those persons.

Detention in custody

(5) Where the prosecutor shows cause why the detention of the accused in custody is justified, the justice shall order that the accused be detained in custody until he is dealt with according to law and shall include in the record a statement of his reasons for making the order.

Order of detention

(6) Notwithstanding any provision of this section, where an accused is charged

(a) with an indictable offence, other than an offence listed in section 469,

(i) that is alleged to have been committed while at large after being released in respect of another indictable offence pursuant to the provisions of this Part or section 679 or 680, or

(ii) that is an offence under section 467.1 or an offence under this or any other Act of Parliament alleged to have been committed for the benefit of, at the direction of or in association with a criminal organization for which the maximum punishment is imprisonment for five years or more,

(b) with an indictable offence, other than an offence listed in section 469 and is not ordinarily resident in Canada

(c) with an offence under any of subsections 145(2) to (5) that is alleged to have been committed while he was at large after being released in respect of another offence pursuant to the provisions of this Part or section 679, 680 or 816, or

(d) with having committed an offence punishable by imprisonment for life under subsection 5(3), 6(3) or 7(2) of the Controlled Drugs and Substances Act or the offence of conspiring to commit such an offence,

the justice shall order that the accused be detained in custody until he is dealt with according to law, unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified, but where the justice orders that the accused be released, he shall include in the record a statement of his reasons for making the order.

Order of release

(7) Where an accused to whom paragraph 6(a), (c) or (d) applies shows cause why the accused's detention in custody is not justified, the justice shall order that the accused be released on giving an undertaking or entering into a recognizance described in any of paragraphs (2)(a) to (e) with the conditions described in subsections (4) to (4.2) or, where the accused was at large on an undertaking or recognizance with conditions, the additional conditions described in subsections (4) to (4.2), that the justice considers desirable, unless the accused, having been given a reasonable opportunity to do so, shows cause why the conditions or additional conditions should not be imposed.